(17,342.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 245.

WILLIAM C. BROWNING, EDWARD DEWEY, AND FRANCIS KING, THE SOLE SURVIVING PARTNERS COMPOSING THE FIRM OF HENRY W. KING & COMPANY, ET AL., PLAINTIFFS IN ERROR AND APPELLANTS,

vs.

CHARLES H. DE FORD.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

INDEX.

	Original.	Print.
Clerk's certificate as to writ of error	1	1
Writ of error	2	1
Return to writ of error	5	2
Petition in error	7	3
Case-made from district court	24	14
Stipulation to consolidate, &c	26	15
Supplemental consolidated complaint	29	17
Exhibit A—Chattel mortgage	36	21
Invoice of Oklahoma City store....(omitted in printing)	38	—
Invoice of Guthrie store.....(" ")	88	—
Answer of C. H. De Ford	135	23
Exhibit A—Order of attachment, Wells & Co. *vs.* Wolfe & Son	149	31
B—Order of attachment Burnham, Hanna, Munger & Co. *vs.* Wolfe & Son	153	34

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. SEPTEMBER 27, 1899

	Original.	Print.
Reply	156	35
Order setting cause for trial	158	36
Order beginning trial	158	36
Orders continuing trial	159	37
Order concluding trial	161	37
Verdict	161	37
Order taking motion for new trial under advisement	161	38
Evidence at the trial	162	38
Index to testimony (omitted in printing)	163	—
Testimony of John R. Mulvane	167	38
Exhibits A, B, C, and D—Promissory notes	168	39
Testimony of Edwin Knowles	181	48
Exhibits E and F—Promissory notes	182	49
Testimony of Louis H. Wolfe	189	54
Exhibits G and H—Promissory notes	191	55
I, K, and L—Promissory notes	191	55
Exhibit M introduced	205	65
Testimony of A. H. Vance	206	66
Exhibits N, O, and P—Promissory notes	207	67
Testimony of Louis H. Wolfe (recalled)	223	78
Chattel mortgage	224	79
Testimony of Wm. L. Harvey	227	81
Exhibit R—Notice	229	82
Testimony of Edgar B. Scott	237	88
W. L. Harvey (recalled)	248	95
Charles F. Figg	260	104
H. M. Palmer	273	113
A. H. Vance (recalled)	285	121
W. K. James	294	127
Plaintiffs rest	298	130
Testimony of C. H. De Ford	298	130
Louis E. Pitts	301	132
Exhibit Five—Complaint in Wells & Co. *vs.* Wolfe & Son	303	133
Testimony of S. L. Overstreet	304	134
Exhibit Seven—Order in Wells & Co. *vs.* Wolfe & Son	307	136
Six introduced	309	137
Testimony of C. H. De Ford (recalled)	310	138
Exhibit One—Writ of attachment, &c., Wells & Co. *vs.* Wolfe & Son	311	139
Two—Writ of attachment, Burnham *et al. vs.* Wolfe & Son	315	141
Three—Sheriff's sale	318	143
Four—Inventory (omitted in printing)	322	—
Testimony of J. M. Brooks	383	146
Louis E. Pitts	400	158
Papers offered, &c.	403	160
Exhibit Five—Papers in Wells & Co. *vs.* Wolfe & Son	407	162
Papers in Burnham *et al. vs.* Wolfe & Son	411	164
Testimony of C. H. De Ford (recalled)	417	168
Louis E. Pitts (recalled)	429	177
Russell Briggs	430	177
H. F. Ardery	433	179

	Original	Print.
Testimony of S. L. Overstreet (recalled)	437	182
Joseph Wisby	442	186
Stipulation as to evidence, &c.	448	190
Testimony of Louis H. Wolfe (recalled)	451	191
Deposition of S. M. Wood	465	201
George H. Wolfe	466	202
Application of Mrs. Wolfe for a deed	472	206
Deposition of David H. Hammons	473	207
S. J. Bear	475	209
Exhibit A—Deed of Louis H. Wolfe to Winifred I. M. C. Wolfe, July 5, 1887	477	211
B—Deed of Wm. F. Wolfe *et ux.* to Laura V. Vance, July —, 1890	479	212
Testimony of Louis H. Wolfe (recalled)	482	214
Deposition of A. H. Vance	484	215
Testimony of S. L. Overstreet (recalled)	491	220
Exhibit M—Letter of Wm. F. Wolfe & Sons to Burnham, Hanna, Munger & Co., January 4, 1888	491	220
Deposition of A. H. Vance	492	221
Testimony of A. H. Vance	497	224
Stipulation from Jaffray record	502	227
Deposition of Henry W. King	503	228
W. W. Wheeler	510	233
A. H. Vance	520	239
O. A. Mitscher	523	240
Thos. B. Ackers	528	243
Exhibit A—Letter of Wm. F. Wolfe & Son to M. D. Wells & Co., July 28, 1890	535	249
B—Statement	536	249
Deposition of James K. Burnham	536	250
Exhibit A—Letter of Wm. F. Wolfe & Son to Burnham, Hanna, Munger & Co., June 7, 1890	547	258
Two checks and protests	548	259
Letter of Wm. F. Wolfe & Son to Burnham, Hanna, Munger & Co., December 8, 1889	549	260
Telegram—Overstreet to Burnham, Hanna, Munger & Co., December 15, —	550	260
Deposition of A. H. Vance	550	261
Frank H. Dean	551	261
Exhibit A—Letter of Miller & Co. to Wolfe & Son, August 18, 1890	560	267
B—Letter of Wolfe & Son to Miller & Co., August 22, 1890	561	268
Deposition of James B. Watt	563	269
Exhibit G—Letter of Miller & Co. to Bank of Topeka, July 24, 1890	574	278
Endorsement on foregoing letter by J. W. Thurston, July 26, 1890	575	278
Deposition of Charles A. Stacy	575	279
Testimony of Louis H. Wolfe (recalled)	577	280
Exhibit A (Stacy)—Letter, Wolfe & Son to Rice, Stix & Co., May 7, 1890	577	280

	Original.	Print.
Exhibit B (Stacy)—Letter, Wolfe & Son to Rice, Stix & Co., May 12, 1890	579	281
C (Stacy)—Letter, Wolfe & Son to Rice, Stix & Co., July 29, 1890	579	282
Deposition of Wm. H. Romaine	580	283
Exhibit A—Letter, Wolfe & Son to Jaffray & Co., July 19, 1890	582	284
C—Letter, Wolfe & Son to Jaffray & Co., July 29, 1890	583	285
D—Statement of account	584	286
Deposition of John T. Chumasero	585	286
Fred E. French	590	290
Wm. L. Lindsey	594	293
Louis H. Wolfe	595	294
James West	596	294
E. E. Fritschle	597	296
Exhibit B—Letter, Frankenthal & Bro. to Wolfe & Sons, March 24, 1890	599	297
C—Letter, Wolfe & Sons to Frankenthal & Bro., March 29, 1890	600	297
Testimony of A. H. Vance	601	298
Louis H. Wolfe	601	298
Drury L. Melone	602	299
Louis H. Wolfe	603	300
Drury L. Melone	609	304
D. S. McKay	612	306
W. J. Milligan	613	307
James M. Brooks	618	310
W. L. Harvey (recalled)	626	316
Defendant rests	627	316
Testimony of Harper S. Cunningham	628	317
Louis E. Pitts	632	319
Journal entry in Jaffray case	635	322
Testimony of Harper S. Cunningham (recalled)	637	323
Papers identified by clerk and testified to by Mr. Cunningham	640	325
Testimony of W. L. Harvey (recalled)	653	335
Charles Figg (recalled)	662	341
Edgar Scott (recalled)	663	342
Charles Figg (recalled)	666	344
Louis H. Wolfe	670	347
A. H. Vance (recalled)	676	351
John R. Mulvane	683	356
Edwin Knowles	687	359
John R. Mulvane (recalled)	692	363
D. A. Harvey	695	365
Plaintiff rests in rebuttal	700	369
Testimony of Louis E. Pitts	700	369
Trial docket entries	702	370
Order in Frankenthal case	703	370
Order in Rice, Stix & Co. case	704	371
Order in Farwell & Co. case	705	371
Order in Wells & Co. case	706	372

	Original.	Print
Order in Burnham *et al.* case	707	372
Testimony of Edgar W. Jones	709	373
Defendant rests in surrebuttal	709	374
Testimony of Louis E. Pitts	709	374
Judgment in Wells case	711	375
Judgment in Frankenthal case	713	376
Judgment in Rice case	715	377
Judgment in Farwell case	717	379
Testimony of H. S. Cunningham	719	380
Testimony closed	719	381
Exhibit Six—Agreement of counsel	720	381
Instructions to jury	723	382
Verdict	744	392
Motion for new trial	746	393
Order overruling motion for new trial	763	402
Judgment	764	402
Agreement as to case-made	765	402
Acceptance of service of case-made	766	403
Notice of settlement of case-made	767	403
Judge's certificate to case-made	768	403
Summons in error	770	404
Motion to dismiss	773	405
Service of copy of motion to dismiss	778	407
Suggestions against motion to dismiss	780	408
Order overruling motion to dismiss	783	410
Judgment	784	410
Petition for writ of error	786	411
Assignment of errors	788	412
Copy of writ of error	794	414
Copy of citation on writ of error	798	416
Petition for appeal	801	417
Assignment of errors on appeal	803	418
Order allowing appeal and writ of error	809	421
Copy of citation on appeal	811	421
Supersedeas bond	814	422
Clerk's certificate	817	424
Stipulation to omit certain portions of the record in printing	818	425

1 THE UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, }

I, the undersigned clerk of the supreme court of the Territory of Oklahoma, do hereby certify that on the twenty-seventh day of February, A. D. 1899, there was deposited in the office of the clerk of the supreme court of said Territory a writ of error; which original writ of error is hereto attached next following:

2 THE UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, }

The President of the United States of America to the honorable judges and clerk of the supreme court of the Territory of Oklahoma, Greeting:

Because in the record of proceedings, as also in the rendition of the judgment of a plea which is in said supreme court of the Territory of Oklahoma, before you, being the highest court of law and equity of the said Territory in which a decision can be had in the said suit between William C. Browning, Edward Dewey, and Francis King, the sole surviving partners composing the firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, partners under the firm name and style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a national banking corporation; The Bank of Topeka, a corporation organized under the laws of the State of Kansas, and A. H. Vance, as plaintiffs in error in the supreme court of said Territory, and Charles H. De Ford, as defendant in error in the supreme court of said Territory, wherein a judgment was rendered in said cause in favor of the said defendant in error and against the said plaintiffs in error, affirming the judgment of the court below and dismissing the action of the plaintiffs in error against the said defendant in error and adjudging that the said plaintiffs in error take nothing by their said petition in error, and affirming in all things the judgment of
3 the lower court in favor of said defendant in error, at the cost of the plaintiffs in error, and wherein the value of the property and the amount in controversy between said parties to said action, exclusive of costs, as shown by the affidavit of Mr. John W. Shartel, exceeded and exceeds the sum of five thousand dollars ($5,000.00), it appears therein that manifest error has happened, to the great damage of the said plaintiffs in error, William C. Browning, Edward W. Dewey, and Francis King, the sole surviving partners composing the firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, as partners under the firm name and style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a national banking corporation; The Bank of Topeka, a corporation organized under the laws of the State of Kansas, and A. H. Vance, plaintiffs in error, as by their complaint and assignment of errors appears,

and we, being willing that the error, if any hath been committed, should be duly and speedily corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the copy of the record of proceedings aforesaid, with all things concerning the same, duly authenticated and verified, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, at the said Supreme Court, within thirty days from the date hereof, that, said record of proceedings aforesaid being inspected by the said
4 Supreme Court, it may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 27th day of February, in the year of our Lord one thousand eight hundred ninety-nine, and in the year of the Independence of the United States of America the one hundred twenty-fourth.

[Seal Supreme Court, Territory of Oklahoma.]

Allowed:

JNO. H. BURFORD,
Chief Justice of the Supreme Court of the Territory of Oklahoma.

Attest: BENJ. F. HEGLER,
Clerk of the Supreme Court of the Territory of Oklahoma,
By M. E. KETSCH, *Deputy.*

745. Filed Feb'y 27, 1899.

BENJ. F. HEGLER,
Clerk Sup. Ct.

[Endorsed:] No. 745. United States Supreme Court. Wm. C. Browning *et al. vs.* Chas. H. De Ford. Filed Feb. 27, '99. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy.

5 And in pursuance to the commands contained in said writ, I, Benjamin F. Hegler, clerk of the supreme court of the Territory of Oklahoma, do hereby return and transmit a full, true, and complete transcript of the record and proceedings had in said court in the case of William C. Browning, Edward W. Dewey, and Francis King, the sole surviving partners composing the firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, partners under the firm name and style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a national banking corporation; The Bank of Topeka, a corporation organized under the laws of the State of Kansas, and A. H. Vance, plaintiffs in error, against Charles H. De Ford, defendant in error, being the same identical proceeding described in said writ; and I do hereby certify that the pages following, numbered from 1 to 817, inclusive, contain a full, true, and

complete transcript of the record and proceedings had in said court in said cause.

In testimony whereof I have hereunto set my hand and caused the seal of the said court to be affixed, at my office, in the city of Guthrie, in the Territory of Oklahoma, this 25th day of March, in the year of our Lord one thousand eight hundred ninety-nine, and of the Independence of the United States of America the one hundred twenty-fourth.

[Seal Supreme Court, Territory of Oklahoma.]

BENJ. F. HEGLER,
Clerk of the Supreme Court of the Territory of Oklahoma.

6 Be it remembered that on the seventeenth day of August, A. D. 1898, there was filed in the office of the clerk of the supreme court of the Territory of Oklahoma a petition in error, with a case-made thereto attached; which said petition in error and case-made thereto attached are in words and figures following, to wit:

7 In the Supreme Court of the Territory of Oklahoma.

WILLIAM C. BROWNING, EDWARD W. DEWEY, and Francis King, the Sole Surviving Partners Composing the Firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, as Partners under the Firm Name and Style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a National Banking Corporation; The Bank of Topeka, a Corporation Organized under the Laws of the State of Kansas, and A. H. Vance, Plaintiffs in Error, *vs.* CHARLES H. DE FORD, Defendant in Error.	Petition in Error.

Comes now the said plaintiffs in error, and for their cause of action in error in this court allege and aver:

That heretofore in a certain cause pending in the district court of the county of Logan and Territory of Oklahoma, wherein these plaintiffs in error, Henry W. King, William C. Browning, Edward W. Dewey, and Francis King, as partners under the firm name of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, as partners under the firm name of Tootle, Wheeler & Motter, and The Central National Bank of Topeka, a banking corporation organized and existing under the laws of the United States; The Bank of Topeka, a corporation organized and existing under the laws of the State of Kansas, and A. H. Vance were plaintiffs, and the said Charles H. De Ford was defendant, and in which the said plaintiffs in the court below prosecuted an action against Charles H. De Ford, as sheriff of

the county of Logan and Territory of Oklahoma, for the recovery of ten thousand dollars ($10,000.00) damages for the conversion of certain personal property alleged to belong to the said plaintiffs and in which the said plaintiffs had a special interest, ownership, and lien by virtue of certain chattel mortgages which they held thereon, and upon such claim issue
8 was duly joined in the said district court of the county of Logan and Territory of Oklahoma, and thereafter and between the nineteenth day of March, A. D. 1895, and the twenty-fifth day of March, 1895, the said cause was tried before a jury and the jury in said cause returned a verdict in favor of the defendant, and thereafter and on the twenty sixth day of March, A. D. 1895, the said plaintiffs filed their motion for a new trial, and which motion afterwards came on to be argued on the twenty-seventh day of March, 1895, and was argued by counsel for both parties at said time and submitted to the consideration of the court, and which said decision of said motion for a new trial the honorable district court of the county of Logan and Territory of Oklahoma took under advisement and retained the same under consideration until the twenty-ninth day of December, A. D. 1897, at which time the said court overruled said motion and to which ruling overruling the said motion for a new trial the said plaintiffs and each of them severally excepted.

And thereupon and on the said twenty-ninth day of December, 1897, the court rendered judgment that the plaintiffs and each of them take nothing by their action, and that the defendant go hence, without day, and recover his costs in such behalf expended; to which said ruling overruling said motion for a new trial and rendering judgment in favor of the said defendant the said plaintiffs and each of them duly excepted.

And the said plaintiffs and each of them severally and individually complain of the action and rulings of the court below in the course of said proceedings, resulting in said final judgment and in the overruling of said motion for a new trial, and allege that substantial error was committed against the interests and rights of these plaintiffs in error and to the prejudice of their substantial
9 rights and each of them, both jointly and severally, as will more fully appear by a case-made, duly made, served, signed, settled, and attested, hereto attached, marked "Exhibit A," hereby referred to and made a part of this petition in error as follows, to wit:

First. The court erred in receiving in evidence, over the plaintiffs' objection, the writ of attachment in the case of M. D. Wells and Company *versus* W. F. Wolfe and Son, the said writ being void in law, because the same was not made returnable, in point of time, as required by law.

Second. The court erred in admitting in evidence the said writ of attachment in the case of M. D. Wells and Company *vs.* W. F. Wolfe and Son, because said writ of attachment and all proceedings thereunder was and were annulled, discharged, vacated, dissolved, and set aside by virtue of a stipulation made and entered into be-

tween the attorneys of record of said M. D. Wells and Company and the attorney of record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said stipulation being on file in said court and having been offered in evidence on the trial of this cause and marked Exhibit "Six," the said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to which said attachment and said judgment said stipulation refers.

Third. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of Burnham, Hanna, Munger & Company *vs.* W. F. Wolfe and Son, because said Burnham, Hanna, Munger & Company did not file under and make themselves parties to the action aforesaid, in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe
10 and Son were defendants, for which reason the said writ of attachment in the said case of Burnham, Hanna, Munger & Company *vs.* W. F. Wolfe and Son, together with all proceedings in said last-mentioned cause, were and are void in law.

Fourth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the said case of Burnham, Hanna, Munger and Company *vs.* W. F. Wolfe and Son, because the said Burnham, Hanna, Munger and Company, although they brought said suit on the 26th day of December, 1890, and after the issue of the writ of attachment in the said case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said Burnham, Hanna, Munger and Company did not file an affidavit and written undertaking, together with a complaint, in the said cause of M. D. Wells and Company *vs.* W. F. Wolfe and Son, which was then and there pending in said court and in which an affidavit and written undertaking for attachment had been executed and filed and a pretended writ of attachment had been issued and was then and there in the hands of said defendant to be levied on the property in controversy in this action.

Fifth. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, because said Sweet, Dempster and Company did not file under and make themselves parties to the action aforesaid in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe and Son were defendants, for which reason the said writ of attachment in the said case of Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, together with all proceedings in said last cause mentioned, were and are void in law.

Sixth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the said
11 case of Sweet, Dempster and Company, although they brought said suit after the issue of the pretended writ of attachment in the said case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said Sweet, Dempster and Company did not file an affidavit and written undertaking, together with a com-

plaint, in the said cause of M. D. Wells and Company *vs.* said W. F. Wolfe and Son, which was then and there pending in said court and in which an affidavit and written undertaking for attachment had been executed and filed and a pretended writ of attachment had been issued and was then and there in the hands of said defendant to be levied on the property in controversy in this action.

Seventh. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of A. Frankenthal *et al. vs.* W. F. Wolfe and Son, because said A. Frankenthal *et al.* did not file under and make themselves parties to the action aforesaid in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe and Son were defendants, for which reason the said writ of attachment in the said case of A. Frankenthal *et al. vs.* W. F. Wolfe and Son, together with all proceedings in said last-mentioned cause, were and are void in law.

Eighth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the case of A. Frankenthal *et al. vs.* W. F. Wolfe and Son, because the said A. Frankenthal *et al*, although they brought said suit after the issue of the pretended writ of attachment in the said case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said A. Frankenthal *et al.* did not file an affidavit and written undertaking, together with a complaint, in the said cause of M. D. Wells and Company *vs.* said W. F. Wolfe and Son, which was then and
12 there pending in said court and in which an affidavit and written undertaking for attachment had been executed and filed and a pretended writ of attachment had been issued and was then and there in the hands of said defendant to be levied on the property in controversy in this action.

Ninth. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of John V. Farwell and Company *vs.* W. F. Wolfe and Son, because said John V. Farwell and Company did not file under and make themselves parties to the action aforesaid in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe and Son were defendants, for which reason the said writ of attachment in the said case of John V. Farwell and Company *vs.* W. F. Wolfe and Son, together with all proceedings in said last-mentioned case, were and are void in law.

Tenth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the case of John V. Farwell and Company *vs* W. F. Wolfe and Son, because the said John V. Farwell and Company, although they brought said suit after the issue of the pretended writ of attachment in the said case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said John V. Farwell and Company did not file an affidavit and written undertaking, together with a complaint, in the said cause of M. D. Wells and Company *vs.* W. F. Wolfe and Son, which was then and there pending in said court and in which an affidavit and written undertaking for attachment had been executed and filed and a pretended writ of attachment had been issued and was

then and there in the hands of said defendant to be levied on the property in controversy in this action.

Eleventh. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of Rice, Stix and Company *vs.* W. F. Wolfe and Son, because said
13 Rice, Stix & Company did not file under and make themselves parties to the action aforesaid in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe and Son were defendants, for which reason the said writ of attachment in the said case of Rice, Stix & Company *vs.* W. F. Wolfe and Son, together with all proceedings in said last-mentioned cause, were and are void in law.

Twelfth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the said case of Rice, Stix and Company against W. F. Wolfe and Son, because the said Rice, Stix and Company, although they brought said suit after the issue of the pretended writ of attachment in the case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said Rice, Stix & Company did not file an affidavit and written undertaking, together with a complaint, in the said cause of M. D. Wells and Company *vs.* said W. F. Wolfe and Son, which was then and there pending in said court and in which an affidavit and written undertaking for attachment had been executed and filed and a pretended writ of attachment had been issued and was then and there in the hands of said defendant to be levied on the property in controversy in this action.

Thirteenth. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of Moses Burn *vs.* W. F. Wolfe and Son, because said Moses Burn did not file under and make himself a party to the action aforesaid in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe and Son were defendants, for which reason the said writ of attachment in the said case of Moses Burn *vs.* W. F. Wolfe and Son, together with all proceedings in said last-mentioned cause, were and are void in law.

Fourteenth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the
14 said case of Moses Burn *vs.* W. F. Wolfe and Son, because the said Moses Burn, although he brought said suit after the issue of the writ of attachment in the said case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said Moses Burn did not file an affidavit and written undertaking, together with a complaint, in the said cause of M. D. Wells and Company *vs.* W. F. Wolfe and Son, which was then and there pending in said court and in which an affidavit and written undertaking for attachment had been executed and filed and a pretended writ of attachment had been issued and was then and there in the hands of said defendant to be levied on the property in controversy in this action.

Fifteenth. The court erred in admitting in evidence the said writ of attachment in the case of Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, because said writ of attachment and all pro-

ceedings thereunder was and were annulled, discharged, vacated, dissolved, and set aside by virtue of a stipulation made and entered into between the attorneys of record of said Sweet, Dempster and Company and the attorney of record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said stipulation being on file in said court and having been offered in evidence on the trial of this cause and marked Exhibit "Six," said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to *of* which said attachment and said judgment said stipulation refers.

Sixteenth. The court erred in admitting in evidence the said writ of attachment in the case of A. Frankenthal *at al. vs.* W. F. Wolfe and Son, because said writ of attachment and all proceedings thereunder was and were annulled, discharged, vacated, dissolved,
and set aside by virtue of a stipulation made and entered
15 into between the attorneys of record of said A. Frankenthal *et al.* and the attorney of record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said stipulation being on file in said court and having been offered in evidence on the trial of this cause and marked Exhibit "Six," the said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to which said attachment and said judgment said stipulation refers.

Seventeenth. The court erred in admitting in evidence the said writ of attachment in the case of John V. Farwell and Company *vs.* E. F. Wolfe and Son, because said writ of attachment and all proceedings thereunder was and were annulled, discharged, vacated, dissolved, and set aside by virtue of a stipulation made and entered into between the attorneys of record of said John V. Farwell and Company and the attorney of record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said stipulation being on file in said court and having been offered in evidence on the trial of this cause and marked Exhibit "Six," the said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to which said attachment and said judgment said stipulation refers.

Eighteenth. The court erred in admitting in evidence the said writ of attachment in the case of Rice, Stix and Company *vs.* W. F. Wolfe and Son, because said writ of attachment and all proceedings thereunder was and were annulled, discharged, vacated, dissolved,
and set aside by virtue of a stipulation made and entered
16 into between the attorneys of record of said Rice, Stix and Company and the attorney of record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said stipulation being on file in said court

and having been offered in evidence on the trial of this cause and marked Exhibit "Six," the said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to which said attachment and said judgment said stipulation refers.

Nineteenth. The court erred in admitting in evidence the said writ of attachment in the case of Moses Burn *vs.* W. F. Wolfe and Son, because said writ of attachment and all proceedings thereunder was and were annulled, discharged, vacated, dissolved, and set aside by virtue of a stipulation made and entered into between the attorneys of record of said Moses Burn and the attorney of record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said stipulation being on file in said court and having been offered in evidence on the trial of this cause and marked Exhibit "Six," the said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to which said attachment and said judgment said stipulation refers.

Twentieth. That the court erred in admitting in evidence the said writ of attachment, pleadings, affidavit in attachment, and other files in the said case of M. D. Wells and Company against W. F. Wolfe and Son, over the objection of the plaintiffs herein, because by the said affidavit in attachment and the petition of the plaintiffs in the said case of M. D. Wells and Company *vs.*
17 W. F. Wolfe and Son it affirmatively appeared that but one writ of attachment had been issued therein to cover that part of the debt which was not due as well as that part of the debt which was alleged to be due. Wherefore said writ of attachment and all proceedings thereunder in said case of M. D. Wells and Company *vs.* W. F. Wolfe and Son were and are irregular and void.

Twenty-first. The court erred in admitting in evidence letters and statements purporting to have been written by W. F. Wolfe and Son to John V. Farwell and Company, John G. Miller and Company, Burnham, Hanna, Munger and Company, Rice, Stix and Company, A. Frankenthal *et al.*, E. S. Jaffray and Company, and M. D. Wells and Company, and other letters containing a reference to the financial standing of the said firm of W. F. Wolfe and Son, because under the statutes of the State of Nebraska, which were in force in the Territory of Oklahoma at the time the said cause of M. D. Wells and Company *vs.* W. F. Wolfe and Son was commenced in this court, an attachment upon a claim not due may not lawfully be issued upon the ground of false and fraudulent representations made for the purpose of inducing a sale of chattels, and it being a fact that the goods in controversy in this action were seized and taken from the plaintiffs herein by the defendant herein under and by virtue of a pretended writ of attachment in the said case of M. D. Wells and Company *vs.* W. F. Wolfe and Son, and the claim in said case upon which action was brought not being due at the

time said action was brought, all of said testimony, letters, and statements which were offered solely for the purpose of showing false and fraudulent representations *was* incompetent, irrelevant, and immaterial and not within the issues in this case and *was* so objected to by these plaintiffs at the time the same *was* so offered.

Twenty-second. The court erred in receiving in evidence, over the objection of the plaintiffs herein, the writs of attachment and other files in the cases of Burnham, Hanna, Munger and
18 Company *vs.* W. F. Wolfe and Son, Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, John V. Farwell and Company *vs.* W. F. Wolfe and Son, Rice, Stix and Company *vs.* W. F. Wolfe and Son, Moses Burn *vs.* W. F. Wolfe and Son, and A. Frankenthal *et al. vs.* W. F. Wolfe and Son, and each of said last-named cases, because the return of the defendant, as sheriff, and the testimony in this case conclusively shows that the said defendant first took from the possession of the plaintiffs herein the property in controversy in this action under and by virtue of the pretended writ of attachment issued in the aforesaid case of M. D. Wells and Company *vs.* W. F. Wolfe and Son, which pretended writ of attachment was and is, for the reasons hereinbefore stated, void and of no effect.

Twenty-third. The court erred in permitting Joseph Wisby, C. G. Horner, and J. R. Keaton and each of them to refer in their final argument in the case and to aver in such final argument before the jury to an alleged failure in business of William F. Wolfe in Cincinnati, Ohio, whereas in truth and in fact there was no evidence of such failure on the part of said Wolfe admitted on the trial of this case.

Twenty-fourth. The defendant was guilty of misconduct, in this, to wit: Upon the final argument of said case before the jury said attorneys, Wisby, Horner, and Keaton, each alleged and averred, argued and insinuated, to and before said jury that, at Cincinnati, Ohio, several years ago William F. Wolfe had failed in business and had not paid his creditors in full, although there was no evidence admitted upon the trial *to* said cause to such effect.

Twenty-fifth. The court erred in permitting Joseph Wisby, in his final address to the jury, to allege and insinuate that the real property referred to in the evidence in this case as the lots upon which the business house of said W. F. Wolfe and Son at
19 Oklahoma city was situated had been conveyed by deed to J. T. Clark, of Topeka, Kansas, although there was no evidence that such conveyance had in fact been made in this case.

Twenty-sixth. The verdict is not sustained by sufficient evidence.

Twenty-seventh. The verdict of the jury is contrary to law.

Twenty-eighth. The court erred in admitting in evidence a pretended copy of a letter to W. F. Wolfe and Son, written by John G. Miller, without proof of the loss of the original letter or other evidence laying a foundation for secondary evidence of its contents.

Twenty-ninth. The court erred in admitting in evidence the pretended copy of a letter of W. F. Wolfe and Son, written by ——

——, without proof of the loss of the original letter or other evidence laying a foundation for secondary evidence of its contents.

Thirtieth. The court erred in excluding the following evidence offered by the plaintiffs, viz., the evidence of Harper S. Cunningham, by whose testimony said plaintiffs offered to show that the attorney of said plaintiffs and the attorney of W. F. Wolfe and Son *was* not present and had no opportunity to be present, but had been excused from attendance upon said court, and had no notice that any proceedings of that kind were to be had in this court at the time said court entered a pretended order in each of the following cases, setting aside the judgment theretofore rendered, discharging and dissolving the attachment therein, to wit, the case of M. D. Wells and Company *vs.* W. F. Wolfe and Son, Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, A. Frankenthal *et al. vs.* W. F. Wolfe and Son, Rice, Stix and Company *vs.* W. F. Wolfe and Son, John V. Farwell and Company *vs.* W. F. Wolfe and Son, and Moses Burn *vs.* W. F. Wolfe and Son.

20 Thirty-first. The court erred in refusing to pass upon the sufficiency of the stipulation in evidence in said cause, which was executed by Bierer and Cotteral, Cunningham and Wisby, and Harper S. Cunningham, and which stipulation was offered in evidence and marked Exhibit "Six."

Thirty-second. The court erred in failing to hold and determine that under the stipulation so, as aforesaid, offered in evidence, marked Exhibit "Six," together with the record of the judgment in this court discharging the writ of attachment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, the several writs of attachment in the cases of Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, John V. Farwell and Company *vs.* W. F. Wolfe and Son, M. D. Wells and Company *vs.* W. F. Wolfe and Son, Rice, Stix & Company *vs.* W. F. Wolfe and Son, A. Frankenthal *et al. vs.* W. F. Wolfe and Son, and Moses Burn *vs.* W. F. Wolfe and Son, were and are to be treated, considered, and determined by this court to be annulled, discharged, set aside, and dissolved.

Thirty-third. The court erred in giving instruction numbered two, upon its own motion, to the jury in the trial of the case in the court below.

Thirty-fourth. The court erred in giving instruction numbered three, upon its own motion, to the jury in the trial of the case in the court below.

Thirty-fifth. The court erred in giving instruction numbered four, upon its own motion, to the jury in the trial of the case in the court below.

Thirty-sixth. The court erred in giving instruction numbered five, upon its own motion, to the jury in the trial of the case in the court below.

21 Thirty-seventh. The court erred in giving instruction numbered seven, upon its own motion, to the jury in the trial of the case in the court below.

Thirty-eighth. The court erred in giving instruction numbered

eight, upon its own motion, to the jury in the trial of the case in the court below.

Thirty-ninth. The court erred in giving instruction numbered nine, upon its own motion, to the jury in the trial of the case in the court below.

Fortieth. The court erred in giving instruction numbered twelve, upon its own motion, to the jury in the trial of the case in the court below.

Forty-first. The court erred in giving instruction numbered thirteen, upon its own motion, to the jury in the trial of the case in the court below.

Forty-second. The court erred in giving instruction numbered fifteen, upon its own motion, to the jury in the trial of the case in the court below.

Forty-third. The court erred in giving instruction numbered sixteen, upon its own motion, to the jury in the trial of the case in the court below.

Forty-fourth. The court erred in giving instruction numbered seventeen, upon its own motion, to the jury in the trial of the case in the court below.

Forty fifth. The court erred in giving instruction numbered eighteen, upon its own motion, to the jury in the trial of the case in the court below.

Forty-sixth. The court erred in giving instruction numbered nineteen, upon its own motion, to the jury in the trial of the case in the court below.

22 Forty-seventh. The court erred in receiving in evidence, over the objection of the said plaintiffs, the pleadings and files in each of the cases of Sweet, Dempster and Company *vs.* W. F. Wolfe & Son, A. Frankenthal *et al. vs.* W. F. Wolfe & Son, John V. Farwell and Company *vs.* W. F. Wolfe and Son, Rice, Stix & Company *vs.* W. F. Wolfe and Son, and Moses Burn *vs.* W. F. Wolfe and Son, for the reason that there was no evidence offered in this cause that the defendant took or claimed to have taken or seized any of the goods in controversy in this action under and by virtue of any writ issued in either of said last above named cases, and for the further reason that no evidence was offered on the trial of this cause that the defendant claimed to have acquired any right to take or have the possession of any of the goods in controversy in this action by virtue of any writ issued or proceedings had in any or either of the last above entitled cases, and for the further reason that in his answer in this case the defendant does not aver or in any manner claim that he at any time took or held possession or claimed any right to any of the property in controversy in this action under and by virtue of any writ issued or proceeding had in any or either of said last above mentioned cases.

Forty-eighth. The court erred in overruling the plaintiffs' motion for a new trial in the court below.

Forty-ninth. The court erred in rendering judgment on said verdict in favor of the defendant and against these plaintiffs and each of them.

And all of the errors complained of herein the plaintiffs in error allege to have been committed to their manifest prejudice, and were each and all duly excepted to at the time, as appears by the case-made herein, and were also specified in the motion for a new trial filed in the court below, the overruling of which is com-
23 plained of here as grounds for the setting aside of said verdict in the court below.

The plaintiffs in error allege that since the rendition of the judgment complained of and the order overruling the said motion for a new trial aforesaid the said Henry W. King, who was a member of the firm of Henry W. King and Company, has deceased, and that the business, assets, and rights of said partnership have vested in the surviving partners in said firm, William C. Browning, Edward W. Dewey, and Francis King, and the said surviving partners are prosecuting the business of said firm, and succeeded to all the rights of said firm, together with the right to prosecute this action and together with the right, title, and ownership of the claim of right to recover against the said Charles H. De Ford for the conversion of said personal property.

Wherefore the said plaintiffs in error pray that the said case may be reversed and the said errors corrected and remanded to the court below, with directions to set aside said verdict, said judgment, the said order overruling said motion for a new trial, and to grant a new trial therein, and to retry said cause according to law.

(Signed) JOHN W. SHARTEL,
(Signed) HENRY E. ASP,
(Signed) JAS. R. COTTINGHAM.
(Signed) HARPER S. CUNNINGHAM,
Attorneys for Plaintiffs in Error.

Filed Aug. 17, '98.

BENJ. F. HEGLER,
Clerk Sup. Ct.

Clerk issue summons to sh'ff Logan Co. for service upon Cotteral & Hornor & Jos. Wisby, att'ys for def't in error.

(Signed) ASP, SHARTEL & COTTINGHAM,
Att'ys for Pl'ff- in Error.

24 TERRITORY OF OKLAHOMA, }
County of Logan. }

In the District Court.

HENRY W. KING AND COMPANY; Tootle, Wheeler & Motter, Substituted for Tootle, Hosea and Company; The Central National Bank, The Bank of Topeka, and A. H. Vance, Plaintiffs,

vs.

CHARLES H. DE FORD; SWEET, DEMPSTER and Company; Alexander Frankenthal and Albert Frankenthal, Partners as A. Frankenthal and Brother; John V. Farwell, Charles B. Farwell, John K. Hannon, John T. Chumasso, and John V. Farwell, Jr., Partners as John V. Farwell and Company; Moses D. Wells, Henry J. McFarland, and Benton R. Wells, Partners as M. D. Wells and Company; Henry A. Rice, Jonathan Rice, William Stix, Daniel Eismond, and Benjamin Eismond, Partners as Rice, Stix and Company; Moses Burn, Doing Business under the Firm Name of the Boston Tailoring House; E. S. Jaffray, Howard S. Jaffray, John R. Woodruff, and Charles J. Hordefield, Partners as E. S. Jaffrey and Company, and Burnham, Hanna, Munger & Co., Defendants.

Case-made. Filed Aug. 9, 1898. M. C. Hart, Clerk Dist. Court. Filed Aug. 17, '98. Benj. F. Hegler, Clerk Sup. Ct.

25 Be it remembered that the plaintiffs above named each brought their several suits against the said defendants, Charles H. De Ford and Leander T. Shockey, in the district court of the county of Logan and Territory of Oklahoma and others named in the foregoing title, service being had only upon the defendants De Ford and Shockey, and which said actions were brought to recover against said De Ford and Shockey for the alleged conversion of two certain stocks of goods, one being located at Oklahoma city and the other at Guthrie, in the Territory of Oklahoma, and which cases were numbered, respectively, 651, 652, 653, 654, and 655, and which cases were brought, to wit, during the month of April, 1891, in the district court of the county of Logan and Territory of Oklahoma.

And thereupon and on, to wit, the 29 day of June, 1891, the plaintiffs and defendants entered into the following stipulation, to wit:

26 TERRITORY OF OKLAHOMA, }
County of Logan. }

In District Court.

HENRY W. KING & CO., Plaintiff-,
vs.
L. T. SHOCKEY and C. H. DE FORD ET AL., Defendants. } No. —.

TOOTLE, HOSEA & CO., Plaintiffs,
vs.
L. T. SHOCKEY and C. H. DE FORD ET AL., Defendants. } No. —.

THE CENTRAL NATIONAL BANK, Plaintiffs,
vs.
L. T. SHOCKEY and C. H. DE FORD ET AL., Defendants. } No. —.

THE BANK OF TOPEKA, Plaintiff,
vs.
L. T. SHOCKEY and C. H. DE FORD ET AL., Defendants. } No. —.

A. H. VANCE, Plaintiff,
vs.
L. T. SHOCKEY and C. H. DE FORD ET AL., Defendants. } No. —.

It is hereby stipulated and agreed by and between the plaintiffs to the above-entitled action and the defendants L. T. Shockey and C. H. De Ford that said actions be consolidated into two actions, with the plaintiff in each of the above actions as plaintiffs in the consolidated action, and the said defendant, C. H. De Ford,
27 to be defendant on one of said consolidated actions, and the defendant L. T. Shockey to be the defendant in the other of said consolidated actions; that said consolidated action against the defendant L. T. Shockey shall be in relation only to the charge of converting the goods alleged to have been converted as the Guthrie stock of merchandise.

That said consolidated action against the defendant C. H. De Ford shall be in relation only to the charge of converting the goods alleged to have been converted as the Oklahoma City stock of merchandise.

It is further stipulated and agreed that the plaintiff- have ten days in which to file petitions in said two consolidated actions, and that the defendant have ten days to move or plead thereto, it being agreed that said defendants, Shockey and De Ford, will appear to the action brought respectively against each of them.

It is further stipulated and agreed that each party hereto may avail himself of all legal rights he may have in each of said actions as consolidated, this stipulation to the contrary notwithstanding.

(Signed) HARPER S. CUNNINGHAM,
Attorney for Plaintiffs.
CUNNINGHAM & WISBY,
OVERSTREET & FLYNN,
BIERER & COTTERAL,
Attorneys for Defendants L. T. Shockey and C. H. De Ford.

Endorsements: No. 651, 652, 653, 654, 655. In the district court, Logan county, Ok. Ty. Henry W. King & Co. *vs.* L. T. Shockey & C. H. De Ford *et al.* Stipulation. Filed June 29th, 1891. T. C. Risley, clerk, by S. K. Van Voorhees, deputy. Harper S. Cunningham, att'y for plaintiff. Bierer & Cotteral, Cunningham & Wisby, & Overstreet & Flynn, att'ys for Shockey & De Ford.

TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

I, H. J. Leach, notary public in and for the county of Logan, Territory of Oklahoma, do hereby certify that the above and foregoing is a true and correct copy of the stipulation in the above-entitled cases, as it appears on file in the office of the clerk of the district court of Logan county, Territory of Oklahoma.

In witness whereof I have hereunto set my hand and affixed my seal this 24th day of January, 1894.

(Signed) H. J. LEACH,
[SEAL.] *Notary Public.*

My com. expires November 1, 1897.

Endorsed: Henry W. King & Co. *vs.* L. T. Shockey & C. H. De Ford *et al.* Certified copy of stipulation.

28 And thereupon the said stipulation was made a rule of court, and the said plaintiffs filed their consolidated complaint against the said Charles H. De Ford under said stipulation.

And the said plaintiffs afterwards and on the 13th day of October, 1893, with leave of court, filed their amended and supplemental consolidated complaint; which said amended and supplemental consolidated complaint is in words and figures following, to wit:

29 TERRITORY OF OKLAHOMA, }
County of Logan. }

In the District Court.

HENRY W. KING AND COMPANY; Tootle, Wheeler & Motter, Substituted for Tootle, Hosea and Company; The Central National Bank, The Bank of Topeka, and A. H. Vance, Plaintiffs,

vs.

CHARLES H. DE FORD; SWEET, DEMPSTER and Company; Alexander Frankenthal and Albert Frankenthal, Partners as A. Frankenthal and Brother; John V. Farwell, Charles B. Farwell, John K. Hannon, John T. Chumasso, and John V. Farwell, Jr., Partners as John V. Farwell and Company; Moses D. Wells, Henry D. McFarland, and Benton R. Wells, Partners as M. D. Wells and Company; Henry A. Rice, Jonathan Rice, William Stix, Daniel Eismond, and Benjamin Eismond, Partners as Rice, Stix and Company; Moses Burn, Doing Business under the Firm Name of the Boston Tailoring House; E. S. Jaffray, Howard S. Jaffray, John R. Woodruff, and Charles J. Hordefield, Partners as E. S. Jaffray and Company, and Burnham, Hanna, Munger & Co., Defendants.

Supplemental Consolidated Complaint.

30 Come now the above-named plaintiffs and, for cause of action against the above-named defendants, say:

That since the commencement of this suit the interest herein of Tootle, Hosea & Company has been sold to and is now absolutely owned by Tootle, Wheeler & Motter, a copartnership, which is composed of Kate M. Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, and which is the successor of Tootle, Hosea & Company.

That the cases now pending in said court between the said parties, numbered, viz., 651, 652, 653, 654, and 655, were by order and the consent of the said court consolidated into two cases, one to be against Leander T. Shockey and the other defendants for the value of the goods mentioned in "Exhibit B" of the original complaints in said cases filed; the other to be against Charles H. De Ford and the other defendants for the value of the goods mentioned in "Exhibit C" of the original complaints, which exhibits are, by consent

and leave of court, detached from the case of Henry W. King and Company *vs.* Said Defendants, and hereto attached, marked Exhibits "B" and "C," and hereby made a part hereof.

Plaintiffs further say that on and prior to November 20, 1890, William F. Wolfe and Son, merchants, doing business at the city of Guthrie and at Oklahoma city, in the Territory of Oklahoma, were indebted to the above-named plaintiffs, as shown by their respective complaints originally filed in their respective cases, which have been by order of court consolidated, as aforesaid, in the following sums, as evidenced by certain promissory notes, copies of which are hereto attached and marked Exhibits "1," "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12," and "13":

To the Bank of Topeka, Topeka, Kansas, the sum of ten
31 thousand one hundred ($10,100.00) dollars, as evidenced by notes described as follows, to wit: One note, due January 28, 1891, for twenty one hundred ($2,100.00) dollars; one note, due January 24, 1891, for two thousand ($2,000.00) dollars; one note, due December 15, 1890, for one thousand ($1,000.00) dollars; one note, due February 20, 1891, for five thousand ($5,000.00) dollars, all of said notes bearing interest at the rate of ten per centum per annum after maturity.

To the Central national bank the sum of two thousand ($2,000.00) dollars, as evidenced by notes described as follows, to wit: One note for one thousand ($1,000.00) dollars, due December 8, 1890, and one note for one thousand ($1,000.00) dollars, due January 14, 1891, the latter of said two notes bearing interest at the rate of twelve per centum per annum from maturity and the former of said two notes bearing 7 per cent. interest from date in fact, though the note on its face calls for interest from maturity.

To Henry W. King and Company the sum of ten hundred fifty-eight & $\frac{54}{100}$ dollars ($1,058.54), evidenced by two (2) promissory notes of six hundred fifty-four & $\frac{27}{100}$ dollars ($654.27) each, dated April 11, 1890, due on or before July 15 and August 15, respectively, in the year 1890, with interest, at 8 per cent. per annum, from date and exchange, less two hundred and fifty dollars ($250) paid September 3, 1890.

To Tootle, Hosea & Company, to whom said Tootle, Wheeler & Motter are successors, as aforesaid, the sum of six thousand six hundred dollars, as evidenced by certain promissory notes described as follows, to wit: One note, due November 1st–4th, 1890, for twenty-five hundred dollars ($2,500), on which was paid five
32 hundred dollars ($500) on November 6, 1890, five hundred dollars ($500) on November 12th, 1890, and five hundred dollars ($500) on December 10, 1890; one note, due December 1st–4th, 1890, for twenty-eight hundred dollars ($2,800) and one note, due January 1st–4th, 1891, for twenty-eight hundred dollars ($2,800), all which three (3) notes are dated April 9th, 1890, and draw interest from date at the rate of nine (9) per centum per annum.

To A. H. Vance the sum of nineteen hundred ($1,900.00) dollars, as evidenced by three certain promissory notes for one thousand

($1,000) dollars, six hundred ($600.00) dollars, and three hundred ($300.00) dollars respectively, each bearing interest at the rate of ten per centum per annum.

That to secure the payment of the above indebtedness the said W. F. Wolfe and Son, then being merchants, as aforesaid, made, executed, and delivered to the above-named plaintiffs their certain chattel mortgage upon certain stocks of goods, wares, merchandise, and other property located in a certain store building on the southwest corner of Division street and Harrison avenue, in the village of Guthrie, and also the goods, wares, merchandise, and other property situated and being in a certain store building occupied by said W. F. Wolfe and Son, situated and described as Nos. 220 and 222 Main street, Oklahoma city, Oklahoma Territory; a true copy of which said mortgage is detached by consent from the original case filed by A. H. Vance against the above-named defendants, and hereto attached, marked "Exhibit A," and hereby made a part hereof as fully as though the same was herein written.

33 And the said W. F. Wolfe and Son surrendered and the said plaintiffs immediately took possession of said stock of goods on said date, and continued in the undisturbed and undisputed possession thereof and through their duly appointed agent, William L. Harvey, until the times, dates, and occurrences hereinafter to be mentioned; that afterwards, to wit, on the 30th day of November, 1890, plaintiff caused said mortgage, which was executed in duplicate, to be filed in the office of the register of deeds of Logan county, Oklahoma Territory, and in the office of the register of deeds of Oklahoma county, Oklahoma Territory.

That said plaintiffs, by their agent, William L. Harvey, proceeded to make correct inventories of the goods, wares, and merchandise found; that the stock located in the said village of Guthrie consisted of the articles mentioned in the inventory thereof, which is hereto attached, marked "Exhibit B," and has been made a part of this complaint; that the stock of goods located in the village of Oklahoma city consisted of the articles mentioned in the inventory thereof originally filed as a part of the complaint of Henry W. King and Company *vs.* Said Defendants, which is hereto attached, marked "Exhibit C," and said exhibit has been made a part hereof; that on or about the 5th day of December, 1890, and while said plaintiffs, by their agent, William L. Harvey, were proceeding to sell and dispose of said property as provided by law and the terms of said chattel mortgage, and while the said plaintiffs, by their agent, William L. Harvey, had the exclusive possession and control of said goods and the store-rooms in which said goods then were, the said defendants and each of them, either in person or by agent,

34 entered into said building and by force and without any right or authority of law and with full notice and knowledge of the existence of said chattel mortgage took said goods from the possession of these plaintiffs and their said agent, William L. Harvey, and he and his servants, and then and there by force evicted from said building and from the possession of said goods, wares, and merchandise and articles of property in said inven-

tories described; that the value of the goods taken from said plaintiffs was twenty-two thousand and forty eight and fifty-four one-hundredths ($22,048.54) dollars; that said property was of sufficient value to have realized from the sale thereof sufficient funds to have paid the indebtedness of the said Wolfe & Son to these plaintiffs in full.

That the above-named defendant, C. H. De Ford, who was then and there the duly appointed, qualified, commissioned, and acting sheriff of Oklahoma county, Oklahoma Territory, did on the 5th day of December, 1890, by the instigation and direction of the above-named codefendants, break open and enter said building, and by force and unlawfully and without the consent of the above-named plaintiffs or their agents did take possession of and forcibly carry away and sell and convert to his own use and the use of said defendants all of the property which was then and there located and being in the building situated at the Nos. 220 & 222 Main street, in the city of Oklahoma city aforesaid, said goods, wares, and merchandise being then and there of the value of ten thousand ($10,000.00) dollars, and which are fully described in "Exhibit C," heretofore referred to.

That by reason of said wrongful acts of said C. H. De Ford and the other above-named defendants the said plaintiffs have been damaged in the sum of ten thousand dollars ($10,000.00)
35 *dollars*, together with interest thereon, at the rate of ten per centum per annum, from the 5th day of December, 1890.

Wherefore plaintiffs pray judgment against the defendant C. H. De Ford for the said sum of ten thousand ($10,000.00) dollars and interest thereon from December 5, 1890, at the rate of ten per centum per annum and costs of this action.

(Signed) HARPER S. CUNNINGHAM,
Att'y for Pl'ffs.

TERRITORY OF OKLAHOMA, }
County of Logan, } *ss.*:

Personally appeared before me, a notary public within and for the county and Territory aforesaid, Harper S. Cunningham, who, being first duly sworn, on his oath says that he is one of the attorneys for the above-named plaintiffs; that he has read the above and foregoing complaint, and that the facts therein set forth are true to the best of his knowledge and belief.

[SEAL.] (Signed) HARPER S. CUNNINGHAM.

Sworn and subscribed before me this 13 day of October, 1893.

ALFRED S. DE WITT,
Notary Public.

Com. expires Jan'y 22, 1895.

36 "EXHIBIT A."

Chattel Mortgage.

Know all men by these presents, that we W. F. Wolfe & Son, parties of the first part are indebted to A. H. Vance, D. A. Harvey, and J. A. Clark, the Bank of Topeka, Topeka, Kansas, the Central National Bank of Topeka, Kansas, Henry W. King & Co., of Chicago, Ills., Tootle, Hosea & Co., St. Joseph, Mo., parties of the second part, in the sum of $22,048.54 *dollars*, with interest on said sum as follows: $2,100 on note due Bank of Topeka, Topeka, Kansas, Jan. 28 1891 with interest at 10 % from maturity; $2,000 on note due Bank of Topeka, Topeka, Kansas, Nov. 22, 1890, with interest at 10 % from said date; $1,000 on note due Bank of Topeka Topeka, Kansas, Dec. 15, 1890 with interest at 10 % from said date; $5,000 on note due Bank of Topeka, Topeka, Kans., February 20, 1891; with interest at 10 % from maturity; $1,000 on note due Central National Bank of Topeka, Kansas, Jan. 14th, 1891, with 10 % interest after maturity; $1,000 on note due Central National Bank of Topeka, Kansas, Dec. 15th, 1890, with interest at 10 % from said date; $1,000 on note due A. H. Vance of Topeka, Kansas; $600 on note due A. H. Vance, of Topeka, Kansas; $300 on note due A. H. Vance of Topeka, Kansas, which with interest amounts at the present time to $2,300.00, $1,048.54 being the amount due Henry W. King & Co., of Chicago Ills. as shown by two notes with interest on said amount from April 11, 1890, at 8 % interest; $1,000 balance on note due November 3rd, 1890 to Tootle, Hosea & Co., of St. Joseph, Mo., with interest at 9 % from April 9, 1890; $2,800 due Dec. 3, 1890 to Tootle, Hosea & Co., of St. Joseph, Mo., with interest at 9% from April 9th, 1890; $2,800 due Jan. 3, 1890, to Tootle, Hosea & Co., of St. Joseph, Mo., with interest at 9 % from April 9, 1890. All of the above being promissory notes made by W. F. Wolfe and Lewis H. Wolfe, being the firm of W. F. Wolfe and Son to the Bank of Topeka, State of Kansas; Central National Bank of the City of Topeka, State of Kansas, Henry W. King & Co., of Chicago, State of Illinois, and Tootle, Hosea & Co., of St. Joseph, State of Missouri.

All of which notes except those made to him are signed by the said A. H. Vance as security; all of which said notes except those made to A. H. Vance and Henry W. King & Co., are signed by D. A. Harvey as security and the note of $5,000 to the Bank of Topeka is signed by J. T. Clark as security; and this mortgage is made for the benefit of said banks and persons above named to cover said notes and all and any renewals of same, and to secure the payment of said money and protect said sureties from loss thereof.

Now, therefore, in consideration of said indebtedness and to secure the payment of the sum as aforesaid said parties of the first part do hereby sell, assign, transfer and set over to said parties of

the second part the property owned entirely by them and without any incumbrance, and described in the following schedule, viz:

The entire stock of dry goods, clothing, hats, caps, boots and shoes, notions and gentlemen's furnishing goods of said first parties now contained in the store building occupied by them and situated on the S. W. corner of Harrison Ave. and Division Sts. in the city of Guthrie, Oklahoma Territory, and also the entire stock
37–133 of dry goods clothing, hats, caps, boots and shoes, notions and gents' furnishing goods of said first party now contained in the store building occupied by them and situated and described as follows: No. 220 & 222 Main St. Oklahoma city, Oklahoma Territory, it being the true intent and meaning of the parties hereof to include and cover herein all goods, wares and merchandise of whatsoever kind and nature now contained in each of the said store buildings. Also all fixtures and furniture in each of said buildings.

Provided, however, that if said debt and interest be paid as above specified this sale and transfer shall be void, otherwise to be in full force and effect.

The possession of the said above-described property is hereby surrendered to the said parties of the second part and the said parties of the second part shall sell the same at public or private sale with or without notice, and after satisfying the aforesaid debt and interest thereon and necessary and reasonable costs, charges and expenses incurred out of the proceeds of sale they shall return the surplus to the parties of the first part or their legal representatives and — from any cause said property shall fail to satisfy said debt and interest as aforesaid the said parties of the first part hereby agree to pay the deficiency.

In witness whereof the said parties of the first part hereunto set their hands this fifteenth day of December, 1890.

(Signed) W. F. WOLFE & SON.

Witness' signature:
HARPER S. CUNNINGHAM.

This instrument executed in duplicate.

(Endorsement:) "Filed December 15th, at 8.45, 1890. Lewis H. Laws, county clerk. Recorded December 30th, 1890, in Mort. Record No. 1, pp. 127 & 128. Lewis H. Laws, county clerk."

(Here follow invoices of stock of Oklahoma City & Guthrie stores, which are omitted in printing, per stipulation. See side page 818.)

134 (Said consolidated complaint is endorsed on the back as follows:)

"In the dist. court, Logan Co., Ok. Ter. Henry W. King & Co. *et al.*, pl'ffs, *vs.* Charles H. De Ford *et al.*, def'ts. Consolidated complaint. 658. Filed Oct. 13, 1893. Louis E. Pitts, clerk dist. court. Harper S. Cunningham, att'y for pl'ffs."

134½ And afterwards and on the 27th day of March, 1894, the said defendant, Charles H. De Ford, filed his answer in said cause to said amended and consolidated complaint; which answer is in words and figures following, to wit:

135 In the District Court of Logan County, Territory of Oklahoma.

HENRY W. KING ET AL.
vs.
C. H. DE FORD, Defendant. } Consolidated Action.

Answer of C. H. De Ford.

Filed March 27, 1894. Louis E. Pitts, Clerk Dist. Court.

First. Comes now the defendant, C. H. De Ford, and, for answer to the plaintiffs' complaint, denies each and every allegation therein contained not herein specifically admitted to be true.

Second. Further answering, the defendant admits that he was the sheriff of Oklahoma county, as alleged in the complaint, and admits that as such sheriff he took a certain stock of goods at Oklahoma city, Oklahoma Territory, on the 27th day of December, 1890, but denies that he took the same wrongfully or unlawfully. Defendant avers that on the — day of December, 1890, William F. Wolfe and Louis H. Wolfe were engaged in the mercantile business at Guthrie and Oklahoma city, in said Territory, as partners under the firm name and style of W. F. Wolfe & Son; that at said time Wolfe & Son were indebted to various parties on large sums of money, to wit:

Sweet, Demster & Co.	$1,400.00
A. Frankenthal & Bro.	195.85
John V. Farwell & Co.	523.91
M. D. Wells & Co.	2,489.31
Rice, Stix & Co.	754.28
136 Boston Tailoring House	
E. S. Jaffrey & Co.	5,250.00
Burnham, Hanna, Munger & Co.	3,500.00
And Moses Byrne & Co.	

That all of said last-named parties were wholesale merchants, and the indebtedness so due them, as aforesaid, was for goods, wares, and merchandise theretofore sold and delivered by them to said Wolfe & Son; that said Wolfe & Son fraudulently contracted each and all of said indebtedness by means of false and fraudulent property statements, in which they pretended and represented themselves to be the owners of real estate at Topeka, Kansas, of the value of twenty thousand dollars and upwards, whereas in truth and in fact they were not the owners of any real estate at said times at said Topeka, Kansas, and in which they pretended and represented themselves to be the owners of valuable real estate at Oklahoma city, aforesaid,

of the value of twelve thousand dollars, whereas in truth and in fact they were not the owners of any real estate in Oklahoma city, aforesaid, and whereas in truth and in fact the values placed upon said real estate so pretended to be owned by them were largely in excess of the true and real values of said real estate, and also that they were the owners of merchandise at Oklahoma city of the value of about seventeen thousand dollars, and at Guthrie, in said Territory, of the value of about thirty-five thousand dollars, which statements were false and fraudulent and were known by said Wolfe & Son to be false and fraudulent at the time, and were made by them with the fraudulent intent and purpose to cheat and defraud the aforesaid creditors. The defendant avers that relying on the said
137 false property statements, and believing from said statements that said Wolfe & Son were the owners of a large amount of property, which they did not own, the said creditors were induced to and did ship to said Wolfe & Son the goods, wares, and merchandise aforesaid; that thereafter, on the 15th day of December, 1890, having obtained all the goods and credit they could get, the said Wolfe & Son, conspiring together and designing to cheat, hinder, delay, and defraud their said creditors, wrongfully and unlawfully executed and delivered to said plaintiffs a pretended chattel mortgage, copy of which is filed with the complaint. Defendant says that the plaintiffs had full knowledge of the fraudulent acts of the said Wolfe & Son and well knew that said Wolfe & Son in making said pretended chattel mortgage intended thereby to cheat, hinder, delay, and defraud their said creditors above named; and defendants aver that said pretended chattel mortgage was not given or accepted in good faith for the purpose of securing a *bona fide* indebtedness, but that said indebtedness was false, fictitious, and trumped up to suit the occasion, in part if not altogether, and that the real purpose and intent of the said Wolfe & Son in executing said mortgage was to place the property of the said Wolfe & Son beyond the reach of their creditors in order to cheat, hinder, and delay them in the collection of their debts, all of which was well known to and participated in by said plaintiffs, by reason whereof the said pretended mortgage was utterly void and of no effect, and passed no title, either general or special, to the said plaintiffs.

That on the 17th day of December, 1890, the said M. D. Wells and Company began suit against said Wolfe & Son in the district court of Logan county, Territory of Oklahoma, to recover of them the amount of their indebtedness, and duly caused a writ of
138 attachment to issue out of said court, directed to the sheriff of Oklahoma county, said Territory, commanding him to levy on the goods and property of the said defendant, Wolfe & Son, sufficient to satisfy their said claim and the probable costs of action; that, acting under said writ as sheriff aforesaid, defendant duly levied upon the stock of goods mentioned in plaintiffs' complaint as the property of the said Wolfe & Son, and in all things duly performed the commands of said writ. A copy of said writ, with the return and all endorsements thereon, is hereto attached as a part of this answer, marked "Exhibit A."

Defendant alleges that said writ was rightfully issued by the clerk of said court, and was rightfully levied by this defendant; that the property so taken was the property of said Wolfe & Son at the time said writ was issued and levied, and that the said plaintiffs have not and never have had any right, title, or interest, either general or special, in said property or any part thereof to entitle them to maintain this action. Defendant avers that on the — day of ——, 1891, acting under the orders of said court, he advertised said property for sale, and on the 4 day of February, 1891, under said orders, he sold said property to the highest bidder, for cash, for the sum of $3,700.00 *dollars*, and after paying the expenses of the sale, as allowed by the court, the defendant turned into court the sum of about 3,700 dollars, the proceeds of said sale. Defendant avers that the said suits against Wolfe & Son are still pending and undetermined in said court.

Defendant further avers that on the — day of December, 1890, the said Burnham, Hanna, Munger & Co. began suit against said Wolfe & Son in the district court of Logan county, Oklahoma Territory, to recover the amount of their indebtedness aforesaid,
139 and duly caused a writ of attachment to issue out of said court, directed to the sheriff of Oklahoma county, said Territory, and commanding him to levy of the goods and property of the defendant Wolfe & Son sufficient to satisfy their said claim; that acting under said writ, as hereinbefore stated, said defendant duly levied upon the stock of goods aforesaid as the property of the said Wolfe & Son, subject to the attachment of M. D. Wells and Company aforesaid, and in all other things duly performed the commands of said writ. A copy of said writ, with the return and all the endorsements thereon, is attached as a part of this answer, marked "Exhibit B."

Defendant alleges that said writ was rightfully issued by the clerk of said court and rightfully levied by this defendant; that in said case judgment was duly rendered for the plaintiff, —— ——, for the sum of about $3,700 *dollars* and costs of suit and sustaining their attachment. Defendant alleges that he levied various other writs of attachment issued out of said court of competent jurisdiction upon said property, but denies that he took said property or interfered with the same in any way otherwise than as aforesaid.

Third. Further answering, defendant alleges that at the time he took said stock of goods, as set forth in the preceding paragraph, and during all the time he held the same the *defendants* had full and due notice and knowledge of the fact, as also of all said court proceedings and orders, etc., and that, having such notice and knowledge, the plaintiffs utterly failed to take any steps to try the title to said property, but instead stood back and purposely and designedly permitted said property to be sold, as aforesaid, with the wrongful and fraudulent intent to bring the present action, in which
140 they might place and have placed an ex*h*orbitant value on said property, largely in excess of what it was worth, and claim damages far beyond the real value of said property with the wrongful and unlawful intent to defraud and injure this defendant, by reason whereof said plaintiffs were and are barred to prosecute

the present action under general section 4905 and article 40, entitled "replevin," of the Statutes of Oklahoma, 1890.

Fourth. Further answering, defendant alleges that the said firm of Wolfe & Son was formerly engaged in business at Topeka, Kansas, but that the firm of Wolfe & Son at Topeka, Kansas, was not composed of the same members as those who composed it in Oklahoma; that the Topeka firm was composed of William F. Wolfe, Louis H. Wolfe, and Frederick W. Wolfe, whereas the Oklahoma firm was composed of William F. Wolfe and Louis H. Wolfe only, as already stated herein; that the pretended indebtedness specified in the alleged mortgage to the plaintiffs was all contracted, if at all, with the Topeka firm, whereas the indebtedness due the creditors named in the second paragraph of this answer was all contracted with the Oklahoma firm, and that the latter firm could not mortgage its assets for the benefit of the creditors of the former firm so as to affect the rights of the creditors of the new firm.

Fifth. For a fifth and further paragraph of answer to the plaintiffs' consolidated complaint herein, defendant says that at the time of the execution of the pretended chattel mortgage by W. F. Wolfe & Son to plaintiffs, as mentioned in plaintiffs' consolidated complaint, said W. F. Wolfe & Son pretended to be indebted to said plaintiffs severally, as in said complaint alleged, but defendant avers that said indebtedness, if any, was of long standing and was amply
141 secured before the execution of said chattel mortgage. Defendant further avers that at the time of the execution of said pretended chattel mortgage to the plaintiffs herein said firm of Wolfe & Son were largely indebted to other parties and for a greater portion of the goods, wares, and merchandise described in said mortgage; that said firm of W. F. Wolfe and Son were wholly insolvent; that the goods, wares, and merchandise described in said pretended mortgage consisted of all the property owned by said firm of W. F. Wolfe & Son, and save and except the goods, wares, and merchandise mentioned and described in said pretended chattel mortgage the said firm of W. F. Wolfe & Son nor either member of said firm had any other or different property of any nature or kind whatever that was subject to the payment of their debts; that at the time of the execution of said pretended chattel mortgage to the plaintiffs herein the said W. F. Wolfe & Son were indebted to various parties other than said pretended mortgagees in the sum of about nineteen thousand dollars, and that the goods, wares, and merchandise described in said pretended chattel mortgage, being all the property then owned by said firm of W. F. Wolfe & Son or either member thereof subject to the payment of their debts, *was* worth less than said amount of nineteen thousand dollars. The defendant avers that said pretended chattel mortgage was given in order to avoid the insolvent & assignment laws of the Territory of Oklahoma and in order to give a preference to one debt or class of debts over another, such preference debts not being for labor or wages, and for the purpose of cheating, defrauding, hindering, and delaying said other creditors in the collection of their said claims; all of which said facts

were then well known to the plaintiffs in this action, as well
142 as to said firm of W. F. Wolfe & Son. The defendant further avers that, independent of the terms and stipulations of said pretended chattel mortgage, it was agreed at or just prior to the date of the execution thereof by and between the said W. F. Wolfe & Son and said mortgagees that one W. L. Harvey should act as a trustee for all of said parties in the disposition of said goods; that he should sell and dispose of the same, and from the proceeds thereof first pay himself for services for so doing and the costs and expenses of such sale, and, second, that he should pay to the plaintiffs in this action their pretended claims, and if there then remained any moneys from the proceeds of said sale that he could pay the same over to the said firm of W. F. Wolfe & Son; that immediately upon the execution of the said pretended chattel mortgage the said firm of W. F. Wolfe & Son surrendered the possession, dominion, and control of the property therein described to the said pretended mortgagees and thereupon went out of business, and that the said Wolfe & Son have never at any time since the surrender of the possession of said property, as aforesaid, exercised or sought to exercise any control or dominion over said property or to again engage in the mercantile business, said transaction being in legal effect a voluntary assignment on the part of the said Wolfe & Son for the benefit of a part of their creditors only and void. Wherefore the defendant denies that said plaintiffs or either of them, by the execution of the said pretended chattel mortgage or in any other manner, ever obtained any right to or interest
in or property in or right to the possession of any of the
143 said goods, wares, and merchandise mentioned and described in said pretended mortgage, but, on the contrary, in the taking of said pretended chattel mortgage and the possession of the goods, wares, and merchandise therein described and in their claiming the right to the possession thereof or interest therein that said plaintiffs were wrong-doers, unlawfully and fraudulently attempting to aid said firm of W. F. Wolfe & Son to cheat and defraud their other creditors and to hinder and delay them in the collection of their claims against the said firm of W. F. Wolfe & Son.

Sixth. For a sixth and further answer to the plaintiffs' consolidated complaint the defendant alleges that in the year 1890 and prior thereto W. F. Wolfe, Louis H. Wolfe, and Frederick W. Wolfe were engaged in the mercantile business at Topeka, Kansas, as partners under the firm name and style of W. F. Wolfe & Sons; that at said times the plaintiffs herein pretended to be creditors of said firm and had taken notes of said firm for the amounts of their several pretended claims; that some of said notes were signed by one D. A. Harvey; that others were signed by one John T. Clark, and all of said notes were signed by said plaintiff, A. H. Vance, said parties signing said notes as pretended sureties thereon; that A. H. Vance is a brother-in-law of Louis H. Wolfe; that D. A. Harvey is an uncle of Louis H. Wolfe, and that John T. Clark is the father-in-law of said Louis H. Wolfe; that the stock in trade of the said Wolfe and Sons at Topeka consisted largely, if not altogether,

of remnants and broken lots of merchandise and odds and ends of a run-down stock, and were of very small commercial value, and defendant is informed, and therefore alleges the fact to be, that some of said goods were the wreckage of a former failure of said Wolfe &
144 Sons, which they had surreptitiously made away with without the knowledge of their creditors and removed to Topeka, and with which they finally opened up their business in Topeka. Defendant alleges that at the time aforesaid said Wolfe & Sons were utterly insolvent and were known to be so by all the plaintiffs; that, having no means with which to pay their said pretended indebtedness, and well knowing that if the same should be paid at all it would have to be paid by said Vance, Harvey, and Clark, the said Wolfe & Sons, confederating and conspiring together with the said Vance, Harvey, and Clark, entered into and formed an unlawful scheme and combination with the said Harvey, Vance, and Clark for the purpose of protecting and relieving the said Harvey, Vance, and Clark from their said pretended surety obligations, and also for the purpose of cheating and defrauding the parties whom they should be successful in deceiving and imposing upon in the carrying out of their said fraudulent scheme and conspiracy; that, pursuant to said scheme and conspiracy, it was agreed, understood, and arranged between said parties that said Wolfe & Sons should remove their business from Topeka aforesaid to Oklahoma Territory, and should there open up with a flourish of trumpets under the firm name and style of W. F. Wolfe & Son; and whereas the said W. F. Wolfe was the owner of real estate in Topeka of the alleged value of ten thousand dollars or more, it was agreed, understood, and arranged that said W. F. Wolfe should secretly convey said property to the wife of said A. H. Vance, so that the same would be in fact beyond the reach of creditors, but as a part of said scheme or plan it was understood that the deed of conveyance should not be placed on record, but should be withheld from record in order that said property might be used and referred to by said
145 W. F. Wolfe & Son for the wrongful and unlawful purpose hereinafter stated; and whereas the said L. H. Wolfe had been the owner of certain other real estate in Topeka of the alleged value of ten thousand dollars or more which he had already conveyed to his wife for the purpose of placing it beyond the reach of creditors, and the deed to which had never been placed of record, it was further understood that the deed of conveyance should not be placed of record, but should be withheld from record in order that said property might be used and referred to by said Wolfe and Son for the wrongful and unlawful purpose hereinafter stated; that pursuant to said plan and arrangement the said W. F. Wolfe, on the — day of July, 1890, duly conveyed the property owned by him to Laura H. Vance, the wife of A. H. Vance, as aforesaid, and the deed to said property was duly laid away and withheld from the record, as had theretofore been agreed upon. Defendant alleges that upon going to Oklahoma city the said L. H. Wolfe became the owner of real estate at Oklahoma city of the alleged value of twelve thousand dollars, and as a part of said conspiracy and in

keeping and harmony therewith it was agreed, understood, and arranged between said parties that said property should be conveyed by said L. H. Wolfe to Georgiana H. Wolfe, his mother, and that the deed to said property should be withheld from record the same as the other deeds herein referred to; in accordance with which plan and understanding said Oklahoma City real estate was, on the — day of ——, 18—, duly conveyed to said Georgiana H. Wolfe by the said L. H. Wolfe, and deed thereto duly withheld from the record, as theretofore agreed upon; all of which transfers and the conduct of the parties in relation thereto were a part of the general plan and conspiracy so formed, as aforesaid.

146 It was understood and agreed by and between said parties as a part of said scheme that said Wolfe & Son, after they had established their business, as aforesaid, in Guthrie and Oklahoma city, should at once proceed to buy all the goods they could get on credit to fill up and replenish their depleted stock, and to aid in this the said Wolfe & Son, pursuant to the plans theretofore agreed upon, as aforesaid, were to make property statements to wholesale houses showing that they owned said Topeka and Oklahoma City property of the value as heretofore stated, the said deeds thereto being withheld from the records, as aforesaid, in order to aid said Wolfe & Son in imposing upon and deceiving the persons to whom said statements should be made; that as soon as it became apparent that said Wolfe & Son had obtained all the goods they could get by the means aforesaid it was understood and agreed that said Wolfe & Son should execute a mortgage upon all the goods thus obtained and any other goods that they might have to the plaintiffs herein, and immediately turn them over to said plaintiffs, who would thereupon convert them into cash and appropriate the money thus realized to their own use, thereby cheating and defrauding the persons whom they had induced to sell goods to said Wolfe & Son by such fraudulent means.

It was also agreed that as soon as this contingency should happen all the deeds to said real estate should immediately be put on record, but not until then. Defendant alleges that pursuant to said plan and conspiracy said Wolfe & Son came to Oklahoma and opened up their business—one store at Guthrie and one at Oklahoma city; that they immediately took steps to obtain all the goods they

147 could by the means aforesaid; that under said general plan and scheme they purchased and obtained from the parties named in the second paragraph of this answer goods to the amounts therein specified; that in so doing they represented that they owned real estate in Topeka of the value of twenty thousand dollars, in Oklahoma city of the value of twelve thousand dollars; that they owned merchandise in Guthrie of the value of thirty-six thousand dollars, and merchandise at Oklahoma city of the value of about seventeen thousand dollars, and that they owned property over and above all their debts and liabilities to the amount of sixty thousand dollars, or thereabout, all of which statements were utterly false and untrue and known to be false and untrue by said Wolfe & Son at the time, and were made with the fraudulent and wrongful

intent and purpose to impose upon, cheat, and defraud said creditors, and said creditors, relying upon said statements and believing them to be true, were induced to and did sell and deliver to said Wolfe and Son goods to the amount specified in the second paragraph, as aforesaid, on the strength of said false and fraudulent statements and representations.

Defendant avers that in all things said Wolfe & Son pursued and carried out said plan and conspiracy up to and until the 15th day of December, 1890, at which time, by the means aforesaid, they had obtained credit and received goods to the amount of nineteen thousand dollars; that on or about the last-named date said creditors had begun to grow uneasy and restless, and some claims had been placed in the hands of attorneys for collection, so that, fearing if they delayed any longer said creditors might take steps to balk their said scheme and conspiracy, and believing that the hour was at hand for the consummation of the fraud which they had planned,
said A. H. Vance, on the date last named, came down from
148 Topeka, Kansas, with a mortgage duly prepared, and the
said Wolfe & Son immediately executed the same, abandoned said goods, and left the country.

Thereupon the deeds secretly given, as aforesaid, were filed for and put on record and the scheme was perfected so far as it laid within their power to perfect it. Defendant alleges that plaintiffs were at all times fully cognizant of said scheme and aiding and abetting same, and that in this action they are seeking the aid of the law to carry into effect said unlawful scheme and conspiracy.

Defendant refers to the second paragraph of this answer and makes the same by reference a part of this his sixth paragraph of answer.

Wherefore defendant demands judgment for costs of suit and all other proper relief.

(Signed) WISBY & HORNER,
KEATON & COTTERAL,
Attorneys for Defendant C. H. De Ford.

TERRITORY OF OKLAHOMA, } *ss:*
County of Logan, }

John H. Cotteral, being first duly sworn, on his oath states that he is one of the attorneys for the defendant C. H. De Ford; that said defendant is now absent from Logan county, and that the allegations in the foregoing answer are true as affiant verily believes.

(Signed) JOHN H. COTTERAL.

Subscribed and sworn to before me this 26 day of March, 1894.

[SEAL.] H. J. LEACH,
Notary Public.

My commission expires Nov. 1, 1897.

149 *Order of Attachment, District Court.*

TERRITORY OF OKLAHOMA, } ss:
Logan County, }

District Court of Logan County.

M. D. WELLS & Co., Plaintiff-, }
vs.
W. F. WOLFE & SON, Defendant-. }

The Territory of Oklahoma to the sheriff of Oklahoma county, Greeting:

You are commanded to attach and safely keep the lands, tenements, goods, chattels, stocks or interest in stocks, rights, moneys, and effects of the defendants, W. F. Wolfe & Lewis Wolfe, partners as W. F. Wolfe and Son, not exempt by law from being applied to the payment of the claims of the plaintiffs, Moses D. Wells, Henry J. McFarland, and Brenton R. Wells, partners as M. D. Wells and Company, or so much thereof as will satisfy their claim for twenty-five hundred and $\frac{21}{100}$ dollars and fifty dollars, the probable costs of this action.

You will make due return of this order forthwith.

Witness my hand and the seal of said court, at Guthrie, Oklahoma Territory, this 18th day of December, A. D. 1890.

[Seal Dist. Court, Logan County, Ok. Ty.]

T. G. RISLEY, *Clerk,*
By W. P. MEADOWS, *Deputy.*

Returned and filed Jan. 7th, 1891.

T. G. RISLEY, *Clerk,*
By W. P. MEADOWS, *Deputy.*

Exhibit A.

Endorsed on back as follows: Attached at 6 p. m., Dec. 27, '90. Order of attachment. District court, Logan county. Doc. 1, No. 61, page 367. M. D. Wells & Co., plaintiff-, *vs.* W. F. Wolfe & Son, defendant-. Amount sworn to, 2,500. Probable costs, $50. Returnable forthwith. T. G. Risley, by W. P. Meadows, deputy. Goods.

150 *Sheriff's Return.*

December 18th, 1890.—Received this order, and, according to the command thereof, I did, on the 27th day of December, 1890, at 5 o'clock p. m., in the presence of G. Washington Pence and G. A. Litchel-, two credible persons, residents of the county, attach the following goods and chattels, to wit, all of the goods and chattels described in the inventory and appraisement, which is hereto attached, marked "Exhibit A," and made a part of this return, and, after ad-

ministering an oath to said G. Washington Pence and G. A. Mitchell to make a true inventory and valuation of said property, in writing, I then, with them, made an inventory and appraisement of said property, which is herewith returned. I also, on the same day, delivered to W. L. Harvey a certified copy of this writ. He, the said Harvey, was in possession of said property when I made the levy. I also posted upon the building over each of the lots a certified copy of this writ. I levied on lots 21 and 22, in block 34, Oklahoma city, Oklahoma county, O. T., subject to a former attachment levied on the 15th day of December, 1890, in the case of Pleasants Goodwin & Co. *vs.* W. F. Wolfe & Son. I levied on lot 23, in block 34, Oklahoma city, *I* Oklahoma county, O. T., subject to former attachment levied on the 22nd day of December, 1890, in the case of D. W. Haydock *vs.* W. F. Wolfe & Son.

Given under my hand this 5th day of January, 1891.

C. H. DE FORD,
Sheriff of Oklahoma County, O. T.

361. Filed Jan. 7th, 1891.

T. G. RISLEY, *Clerk*,
By W. P. MEADOWS, *Deputy*.

Inventory and Appraisement of Property Attached.

THE TERRITORY OF OKLAHOMA, } *ss*:
Oklahoma County, }

We, C. H. De Ford, sheriff of Oklahoma county and Territory of Oklahoma, and G. Washington Pence and G. A. Mitchell, two residents of Oklahoma county, the said G. Washington Pence and G. A. Mitchell being first duly sworn by me to make a true inventory and appraisement attached as the property of W. F. Wolfe and Son on an order of attachment issued in an action, Burnham, Hanna, Munger & Co. *is* plaintiffs and W. F. Wolfe & Son *is* defendants, now pending in the district court of Logan county, do make the following inventory and appraisement of said property, to wit:

Lots 21, 22, and 23, in block 34, in Oklahoma city, Oklahoma county, O. T., appraised at twelve hundred dollars each, $3,600; improvements on said lots appraised at $1,500.

Filed Jan. 7th, 1891.

T. G. RISLEY, *Clerk*,
By W. P. MEADOWS, *Deputy*.

151 *Sheriff's Fees.*

Making levy	.50
Summoning appraisers	.50
Swearing appraisers	.25
Appraising property, 6 days, at $1.00 per day	6.00
Taking inventory, 6 days, at $2.00 per day	12.00

Serving copy of attachment	.50
1 1	.25
3 copies of attachment.....	.75
Making return	.50
Total....	$21.25

Appraisers' Fees.

G. Washington Pence, appraising property, 6 days, at 50c...	3.00
Taking inventory, 6 days, at $2.00 per day	12.00
	15.00
G. A. Mitchell, appraising property, 6 days, @ 50c. per day.	$3 00
Taking inventory, 6 days, @ $2 per day.....	12.00
	15.00
Ed. Scott, for handling goods and helping appraisers, 6 days, at $2.00 per day.....	12.00

C. H. De Ford, sheriff Oklahoma county, O. T.

J. M. Muston, to recording copy of attachment in his recorder's office.....	1.00

152 *Sheriff's Return.*

TERRITORY OF OKLAHOMA, }
Oklahoma County. }

December 26th, 1890, received this writ, and I did, on the 27th day of December, 1890, at 5.10 o'clock p. m., in the presence of G. Washington Pence and G. A. Mitchell, two credible persons, residents of the county, attach same goods and chattels under this writ that was attached and appraised in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son, as shown by the inventory and appraisement returned in that case on an order of attachment issued out of and returned to the district clerk's office of Logan county, O. T.; to which return I herewith refer lots 21 and 22 and building thereon, in block 34, in Oklahoma city, Oklahoma county, Oklahoma Territory, attached, subject to a former attachment in the case of Pleasants Goodwin & Co. *vs.* W. F. Wolfe & Son; lot 23 & building thereon, in block 34, in Oklahoma city, Oklahoma county, O. T., attached, subject to a former attachment of W. D. Hadock *vs.* W. F. Wolfe & Son; also subject to a former attachment of M. D. Wells & Co. *vs.* W. F. Wolfe & Son. All of the goods of W. F. Wolfe & Son that *was* attached on a former attachment of M. D. Wells & Co. *vs.* W. F. Wolfe & Son are hereby attached, subject to that attachment. I also on the same day delivered to W. L. Harvey, whom I found in possession of said property, a certified copy of this

writ. I also posted upon the buildings situated on each of the above-described lots a true and certified copy of this writ.

Given under my hand this 5th day of Jan'y, 1891.

C. H. DE FORD,
Sheriff of Oklahoma County, O. T.

Endorsed: Returned and filed Jan. 7th, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy.

153 *Order of Attachment, District Court.*

TERRITORY OF OKLAHOMA, } ss:
Logan County, }

District Court of Logan County.

BURNHAM, HANNA, MUNGER & CO., Plaintiff-,
vs.
W. F. WOLFE & SON, Defendant-.

C. H. De Ford, sheriff of Oklahoma county, Oklahoma Territory, Greeting:

You are commanded to attach and safely keep the lands, tenements, goods, chattels, stocks or interest in stock, rights, moneys, and effects of the defendants, W. F. Wolfe & Son, not exempt by law from being applied to the payment of the claims of the plaintiff-, Burnham, Hanna, Munger & Company, or so much thereof as will satisfy plaintiffs' claim for thirty-five hundred dollars and three hundred dollars, the probable costs of this action.

You will make due return of this order on the 2nd day of March, A. D. 1891.

Witness my hand and the seal of said court, at Guthrie, Ok. Ty., this 26th day of December, A. D. 1890.

[SEAL.] T. G. RISLEY, *Clerk.*

Exhibit B.

Endorsed: "Attached at 5.10, Dec. 27, '90. Order of attachment. District court, Logan county. Doc. 1, No. 398, page 405. Burnham, Hanna, Munger & Co., plaintiff-, *vs.* W. F. Wolfe & Son, defendant-. Amount sworn to, $3,500.00; probable costs, $300.00. Returned and filed Jan. 7th, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy. Returnable March 2nd, 1891. T. G. Risley, clerk."

154 Said answer is endorsed on back as follows:
"Filed March 27, 1894. Louis E. Pitts, clerk dist. court."

155 And thereafter and on the 12th day of April, 1894, the said plaintiffs filed their reply to the said answer; which reply is in words and figures following, to wit:

156 COUNTY OF LOGAN, *Oklahoma Territory.*

In the District Court.

HENRY W. KING AND CO. ET ALS., Plaintiff-, *vs.* C. H. DE FORD ET AL., Defendant-. } Reply to Consolidated Answer of Defendant.

Comes now the above-named plaintiffs and for reply to the consolidated answer of the defendants say:

That they deny each and every material allegation therein contained.

Second Ground of Reply.

Further replying, the plaintiffs say:

That the writs of attachment mentioned and described in the defendants' second paragraph of answer have been heretofore, to wit, on the — day of ——, 1892, by the consideration of the district court, upon issue duly joined, adjudged to be null and void and to have been issued in said causes without reason or foundation therefor.

(Signed) HARPER S. CUNNINGHAM,
Att'y for Pl'ffs.

LOGAN COUNTY, *Oklahoma Territory,* } *ss:*

Harper S. Cunningham, of lawful age, being first duly sworn, on his oath says that he is the attorney of the plaintiffs in the above-entitled cause; that he has read the above and foregoing reply and knows the contents thereof, and that the same are true as he is informed and verily believes.

(Signed) HARPER S. CUNNINGHAM.

Subscribed and sworn before me this 12th day of April, 1894.
ALFRED S. H. DE WITT,
Notary Public.

Com. expires Jan'y 22, 1895.

(Endorsed on back:) In dist. court, Logan county, Oklahoma Territory. Henry W. King *et al. v.* C. H. De Ford *et al.* Reply of pl'ffs to def'ts' consolidated answer. Filed Apr. 12, 1894. Louis E. Pitts, clerk dist. ct. Harper S. Cunningham, att'y for pl'ffs.

157 And thereafter and on the 19th day of March, 1895, the said cause came on for trial upon the issues joined on the foregoing complaint, answer, and reply, and the trial of said cause began on the said 19th day of March and continued from thence until the 25th day of March, 1895, at which time the jury returned their verdict in said cause, and the court duly caused its proceedings to be entered on the journal of said court at the following dates during said trial, to wit:

158 HENRY W. KING AND CO. vs. C. H. DE FORD ET AL. } 651.

MARCH 2, 1895.

Now, at this time, the above cause is set for trial March 19, 1895, at nine o'clock a. m.

HENRY W. KING & CO. vs. C. H. DE FORD ET AL. } 651.

MARCH 19, 1895.

At this time the above entitled cause is called for trial. Plaintiff is ruled to give security for costs instanter, plaintiff appearing by their attorneys, H. S. Cunningham and —— James, and defendant C. H. De Ford in person and by his attorneys, Wisby and Horner and Keaton and Cotteral and S. L. Overstreet. Defendant filed motion to suppress depositions. Plaintiff objects to filing said motion to suppress depositions; which objection is overruled by the court and exception allowed. Motion to suppress depositions overruled and excepted to by defendant. Motion filed May 5th, 1894, to suppress deposition- of same parties. Alonzo N. Reece sustained on confession and deposition suppressed.

At this time the trial of said cause proceeds, all parties being present, as before stated. Both parties announce ready and the following jury is duly drawn, impaneled, and sworn to try the cause: James O'Neil, D. N. Ginn, C. W. Wilcox, Geo. A. Henry, H. M. Howe, F. Upham, L. S. Musgrove, I. N. Johnson, Jacob Stein, James Sullivan, C. J. Rowell, and John Simons.

159 Statement is made by plaintiff's attorneys to the jury, and the following witnesses are sworn and examined on behalf of said plaintiff: John R. Mulvane, —— Knowles, Lewis H. Wolfe.

At this time the court admonishes the jury as to their conduct during their separation, and the further hearing of this cause is continued until March 20 at 9 a. m.

HENRY W. KING & CO. vs. C. H. DE FORD ET AL. } 651.

MARCH 20, 1895.

Trial of the above cause resumed at this time, all parties being present as before stated.

Plaintiff introduces the evidence of the following witnesses, who are duly sworn: Lewis H. Wolfe, A. H. Vance, D. H. Harvey, —— Scott, Chas. T. Flagg, W. K. James, L. E. Pitts, S. L. Overstreet. Plaintiff rests.

Defendant introduces the evidence of the following witnesses, all being duly sworn: C. H. De Ford, J. M. Brooks.

The court admonishes the jury as to their conduct during their separation as jurors, and the further trial of this cause is continued until M'ch 21st, 1895, at 9 a. m.

160 HENRY W. KING AND CO. vs. C. H. DE FORD ET AL. } 651.

MARCH 21, 1895.

At this time the trial of the above cause is resumed, all parties being present as before stated. Defendant continues the introduction by witnesses L. E. Pitts, C. H. De Ford, H. F. Ardery, Russell Briggs, S. L. Overstreet, Joseph Wisby, Lewis H. Wolfe.

At this time the further trial of this cause is continued until M'ch 22, 1895, at 9 a. m.

HENRY W. KING & CO. vs. C. H. DE FORD ET AL. } 651.

MARCH 22, 1895.

At this time the trial of the above cause is resumed, all parties being present as before stated. The introduction of evidence for both parties is concluded, and the further hearing of this cause is continued until M'ch 23, 1895, at 10.30 a. m.

HENRY W. KING & CO. vs. C. H. DE FORD ET AL. } 651.

MARCH 23, 1895.

At this time the trial of above cause is resumed, all parties being present as before stated. The court instructs the jury and the cause is duly argued by counsel for plaintiffs and defendants. At this time the jury is admonished by the court and the further
161 hearing is continued until March 25, 1895.

HENRY W. KING & CO. vs. C. H. DE FORD ET AL. } 651.

MARCH 25, 1895.

At this time the trial of above cause is resumed, all parties being present, as before stated. The argument in said cause is concluded and the jury retire in charge of a sworn bailiff for deliberation; and afterwards, on the same day, the jury return in open court their verdict, which is as follows, to wit:

"We, the jury in the above-entitled cause, find in favor of the defendant Charles H. De Ford and against all of the plaintiffs.

FERMAN UPHAM, *Foreman.*"

The jury is now discharged from further action in this cause.

HENRY W. KING & CO.
vs.
C. H. DE FORD ET AL. } 651.

MARCH 27, 1895.

At this time motion for new trial filed by plaintiff is argued and submitted and taken under advisement by the court.

162–165 At the trial of said cause, which commenced on the nineteenth day of March, 1895, and lasted until the twenty-fifth day of March, 1895, the following oral proceedings were had and the following evidence was introduced and rulings had thereon, which embraces all of the oral proceedings had on said trial and all of the testimony introduced in said cause or offered therein:

166 In the District Court of Logan County, Oklahoma Territory, February Term, 1895.

HENRY W. KING & CO., Plaintiffs,
vs.
C. H. DE FORD, Sheriff, Defendant. } Consolidated Action.

Before Judge Frank Dale and a jury.

GUTHRIE, OKLAHOMA, *March* 19, 1895.

Appearances.

For plaintiffs, H. S. Cunningham, A. H. Ellis, W. K. James.
For defendants, Wisby & Hornor, Keaton & Cotteral.

STENOGRAPHER'S TRANSCRIPT OF TESTIMONY.

167 *Testimony of John R. Mulvane.*

JOHN R. MULVANE, being called as a witness for the plaintiff and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. JAMES:

Q. You may state where you reside, Mr. Mulvane.
A. Topeka, Kansas.
Q. What relation, if any, have you since January, 1890, sustained to the Bank of Topeka, of Topeka, Kansas?

Counsel for defendant objects to the introduction of any testimony in behalf of the plaintiff in this case upon the following grounds, to wit: First, the court has no jurisdiction of the subject-matter of the action; second, the complaint does not state facts sufficient to constitute a cause of action; third, the plaintiffs are estopped in law from prosecuting this action, for the reason that they do not allege that they did not have notice of the taking of these goods by the sheriff of Oklahoma county under the writs of

attachment; which objection was by the court overruled; to which defendant excepted.

A. I am president of the Bank of Topeka.

Q. And how long have you been such president?

A. Since 1884.

Q. You may state what indebtedness, if any, was owing by William H. Wolfe & Son to your bank on December 15, 1890.

Objected to as incompetent and as not the best evidence; which objection was by the court overruled; to which defendant excepted.

A. You want the contents of the notes?

Q. I asked you what the indebtedness was, if any. You can describe what the indebtedness was, whether by note or on account or what.

A. One for five thousand dollars, one for twenty-one hun-
168 dred dollars, one for one thousand dollars, and one for two thousand dollars.

Q. In that case state what credits, if any, were on those notes on December 15, 1890.

Objected to as incompetent and not the best evidence; which objection was by the court overruled; to which defendant excepted.

A. No credits on them.

Q. Well, now, you may state what payments, if any, had been made prior to December 15, 1890, on the notes you have mentioned in your evidence.

A. None whatever.

Q. You may state what payments, if any, have been made on such notes since December 15, 1890.

A. None whatever.

The four notes are here marked Exhibits A, B, C, and D and are offered in evidence. Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled, to which defendant excepted.

The notes are read in evidence, and are in the following words and figures, to wit:

TOPEKA, KANSAS, *November* 22, 1890.

Sixty days after date we promise to pay to the order of Bank of Topeka, of Topeka, Kansas, two thousand dollars ($2,000.00), with interest at 10% per annum after due until paid, value received.

WILLIAM H. WOLFE.
LOUIS H. WOLFE.
D. A. HARVEY.
A. H. VANCE.

P. O., Oklahoma city, Okla. Ty.

TOPEKA, KANSAS, *September* 13, 1890.

Ninety days after date we promise to pay to the order of Bank of Topeka, of Topeka, Kansas, one thousand dollars ($1,000.00),

with interest at 10% per annum after due until paid, value received.

169 WILLIAM F. WOLFE.
LOUIS H. WOLFE.
D. A. HARVEY.
A. H. VANCE.

P. O. Oklahoma city, O. T.

TOPEKA, KANSAS, *October* 22, 1890.

Ninety days after date we promise to pay to the order of Bank of Topeka, of Topeka, Kansas, twenty-one hundred dollars ($2,100), with interest at 10 % per annum after due until paid, value received.

WILLIAM F. WOLFE.
LOUIS H. WOLFE.
D. A. HARVEY.
A. H. VANCE.

TOPEKA, KANSAS, *November* 19, 1890.

Ninety days after date we promise to pay to the order of Bank of Topeka, of Topeka, Kansas, five thousand dollars ($5,000.00), with interest at 10 % per annum after due until paid, value received.

WILLIAM F. WOLFE.
LOUIS H. WOLFE.
D. A. HARVEY.
A. H. VANCE.
J. T. CLARK.

Cross-examination by Mr. WISBY:

Q. When was this debt contracted?
A. Which one do you mean?
Q. For which these notes were made.
A. You name the one and I will give you the best information I have on it.
Q. I will name the one of September 13, 1890, for $1,000.
A. I think on November 26, 1887.
Q. How was it evidenced at first?
A. Sir?
Q. What evidence of indebtedness did you have at the time the loan was made?
A. A note signed by the same parties.
170 Q. And it continued on from that time, renewed from time to time?
A. Yes, sir.
Q. The debt of November 22, 1890, for $2,000, when was that debt originally contracted?
A. December 7, 1887.
Q. The same parties?
A. Made by the same parties and renewed by the same parties.
Q. A continuous line of renewals?
A. Yes, sir.

Q. For the same amount?
A. Yes, sir.
Q. Was it renewed every ninety days from that time forward?
A. Ninety—probably three to four months.
Q. Every three or four months from that time it was renewed?
A. Yes, sir; no longer than six months; every three or four months.
Q. The one that was given as November 19, 1890, $1,000, when was that original debt contracted?
A. Did you say one or two thousand dollars?
Q. One thousand dollars; I asked you about the $2,000.
A. You asked me about the $1,000 once before.
Q. There were two one-thousand-dollar notes?
A. No; there was not. You asked me about the $1,000 note and I said November 26, 1887.
Q. I have got it wrong. October 22, 1890, for $2,100.
A. April 13, 1888.
Q. That has been renewed as the others?
A. Yes, sir; from time to time, the same makers.
Q. The one of November 19, 1890, for $5,000, when was the original debt contracted for that?
A. May 17, 1890.
Q. The same parties?
A. Yes, sir—that is, the same parties exactly on the other
171 note, with this addition, that J. T. Clark is on that note and not on the others.
Q. Was J. T. Clark on this note originally when the money was gotten?
A. Yes, sir.
Q. And it has been renewed a time or two?
A. Yes, sir.
Q. Were you present at the time these notes were renewed?
A. I was part of the time; either myself or my cashier.
Q. At the time the last renewal notes were given which have been offered in evidence were you present then?
A. I can tell you very quickly if you will let me have the notes.
Q. (Counsel hands witness notes.)
A. These renewals were all made by the cashier with my knowledge and consent; I passed on all those things.
Q. The personal sureties on these notes, is that the only security that the bank had?
A. Yes, sir; never had any other.
Q. No chattel or real-estate mortgage to secure those notes?
A. Never had any other.
Q. How long had you known Wolfe & Son at Topeka before they came to Oklahoma?
A. Oh, I suppose ever since they came to Topeka—perhaps four years, or maybe five years.
Q. When did they come there?
A. That I could not tell; I could not tell you of them before the

contracting of the first debt, in 1887; yes; they were in business when that debt was contracted.

Q. How long had they been in business there?

A. I think a year or two.

Q. Do you know of the fact of their coming from there to Oklahoma?

A. Yes, sir.

Q. When did William F. Wolfe come to Oklahoma with a stock of goods?

172 A. I think, about June, 1890.

Q. Do you know where he first located?

A. No, sir.

Q. Did he go out of business at Topeka at that time?

A. Yes, sir; they had first a store at Oklahoma city, and then they afterwards moved the balance of the stock here to this city, I believe.

Q. And after that they came here, and all their business was transferred from Topeka to Oklahoma Territory?

A. Yes, sir.

Q. You think they came in 1890 first, with the stock, to Oklahoma city?

A. I think the first stock was perhaps in 1889, a small stock at Oklahoma city.

Q. And then the next year they moved their entire stock?

A. That was my memory.

Q. About June, I believe you said, in 1890?

A. I think so; I am not sure about the date; the son came first and the father afterwards.

Q. You felt no concern about it; you had good personal security for this debt?

A. We thought so.

Q. Was any sums of money ever paid on these debts more than the interest from the time they were first contracted until now?

A. No, sir; they represent the unpaid balance, if there was any.

Q. Was there any more debt charges?

A. I think not.

Q. Have you ever taken any steps to make any collection of these notes from the parties who signed them?

A. No, sir; up in Kansas you mean?

Q. Yes, sir; I mean up in Kansas.

A. We have made no steps there.

Q. You have never brought suit against the parties on
173 these notes that you have introduced in evidence—against any of the parties?

A. No, sir.

Q. Did you authorize any one to act for you to obtain security from the Wolfs for these notes?

Objected to as not cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Have you ever taken any other security for these notes?

A. No, sir.

Q. Have you ever authorized any one to take any additional security for you besides the personal security on these notes?

A. None, except to secure down here if he could by mortgage and possession of the stock.

Q. Who did you authorize to act for you in that matter in this Territory?

A. Mr. A. H. Vance.

Q. He is one of the securities on the notes?

A. Yes, sir.

Q. When did you give him that authority?

A. I think about the time that he came down here.

Q. In December, 1890?

A. I couldn't tell you the date, but about the time that the mortgage was taken.

Q. Had he ever talked with you about the matter prior to that time?

A. I couldn't tell you now whether he had or not. I don't remember.

Q. You were authorized to represent the bank and were acting for the bank in the matter?

A. Yes, sir.

Q. I don't believe I exactly understand—what was it you authorized him to do, Mr. Mulvane?

A. Why we were urging payment of our paper every time it came up for renewal or came due, and Mr. Vance said to me something about coming down here. I urged if there was any
174 way of paying or securing our paper that we ought to be secured or paid.

Q. You said a moment ago that you deemed the bank well secured by this personal security?

A. We did, fairly; yes, sir.

Q. Was you talking to Mr. Vance in regard to his and the other parties' paying the note to the bank?

A. No, sir; Mr. Vance and Mr. Harvey were not as good as they had been; their property had very materially shrunk in value, and a part of the security, the paper, we did not regard as good.

Q. And you were urging him to pay the notes?

A. Yes, sir.

Q. Then didn't he mention something about coming down here and getting something for you, or did you mention that to him?

A. That I couldn't tell you now.

Q. Now, you regarded Mr. Vance and these other parties as good for the notes they were on?

A. When the paper was made; yes, sir.

Q. You regarded them good all the while?

A. No, sir.

Q. At each renewal?

A. No, sir; the paper that was renewed became less valuable.

Q. Why did you permit these parties to renew it from 1887 up to 1890 if you thought they were not good?

A. I don't think that I thought they were good then, but there was a good deal of difference—three years had elapsed.

Q. Why didn't you insist on payment in 1890?

A. We perhaps did.

Q. Instead of renewal?

A. We perhaps did in a reasonable way.

Q. Now, Mr. Mulvane, didn't you state a while ago that you deemed at the time these notes were renewed—at the time
175 they were executed and at the time they were renewed—that you deemed the bank perfectly safe and secure by these notes?

A. At the time the paper was made I did.

Q. Didn't you state a while ago that at the time they were renewed the last time, these notes which you have introduced in evidence, that you regarded the personal security as good?

A. It was good when made.

Q. Well, just answer the question.

A. Ask it again. I will try to, sir; I have no intention of doing anything else.

Q. Didn't I ask you if at the time these notes that you have introduced in evidence were renewed, if you didn't regard the personal security as ample and sufficient, or words to that effect, and you answered that you did?

A. Yes, sir.

Q. And that you had no other security?

A. We had no other.

Q. Well, that was true, was it not?

A. How is that? I don't catch the point you are trying to bring out, sir, or trying to have an answer to. If I did I would be able to answer you.

Q. You know Mr. Clark, do you?

A. Yes, sir.

Q. He is on the $5,000 note?

A. Yes, sir.

Q. Did you regard him as perfectly good for that note?

A. I did.

Q. How many times has that note been renewed?

A. I think perhaps twice.

Q. If you wanted the money on that, why didn't you make him pay it?

Objected to as immaterial and not proper cross-examination; which objection was by the court sustained; to which defendant excepted.

176 Q. The notes introduced in evidence is a fair representation of the transaction?

A. Yes, sir.

Q. They show on their face the real facts in that transaction?

A. Yes, sir.

Q. So far as loaning the money and taking the security, the signatures to the notes are concerned?
A. Yes, sir.
Q. Did you ever ask Mr. Clark to pay that $5,000 note?
A. Yes, sir.
Q. Prior to the time of the last renewal?

Objected to as immaterial; which objection was by the court sustained; to which defendant excepted.

Q. You never exacted any chattel mortgage or anything of that kind from Mr. Wolfe at the time he was moving his stock from Topeka to Oklahoma Territory?
A. No, sir.

Redirect examination by Mr. JAMES:

Q. Who were the principal debtors; to whom did the consideration pass?
A. Wolfe & Son.
Q. Who composed that firm; who received the benefit?

Objected to as not the best evidence; which objection was by the court overruled; to which defendant excepted.

A. W. F. Wolfe, and the young man's name—I have forgotten the names, but by seeing the notes I can tell you. William F. Wolfe and Louis H. Wolfe.
Q. What objection, if any, did you make to the chattel mortgage that was given here to secure this and other indebtedness of Wolfe & Son?
A. I did not make any, sir.

Objected to as incompetent, irrelevant, and immaterial, improper redirect and cross-examination, and leading; which objection
177 was by the court overruled; to which defendant excepted.

Q. State whether or not your bank has accepted the chattel mortgage that was given as security to it.

Objected to as incompetent and asking the witness for a conclusion; which objection was by the court overruled; to which defendant excepted.

A. It did.
Q. When?
A. At the time it was given.
Q. I will get you to state what you mean by saying that the personal security on some of these notes was not very satisfactory at the time these last renewals notes were taken.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

A. Property values had very materially shrunk and Mr. Vance

and Mr. Harvey were very seriously embarrassed by the shrinkage of the property.

Q. Where were their properties?

A. In Topeka, mostly; Shawnee county, Kansas.

Q. Real or personal?

A. Real.

Recross-examination by Mr. WISBY:

Q. When did this great shrinkage of values take place in Topeka in the property of these parties?

A. It commenced in the fall or in the winter, I think, of 1888 and 1890, as near as I can remember.

Q. You did not complain of insufficient security on account of the shrinkage of values in the summer of 1889 when they were removing all their stock and property from that country to this?

A. We would have liked to have had our pay.

Q. That does not answer the question, Mr. Mulvane.

A. Just give me the question again.

178 Q. You did not complain of insufficient securities on account of the shrinkage of values in the summer of 1889, when they were removing all their stock and property from that country to this?

A. I don't know as we did.

Q. But yet you say the shrinkage in values occurred in 1888 and 1889?

A. We undoubtedly run behind.

Q. Is that the fact?

A. How is that, sir?

Q. You say the shrinkage of values that you have reference to occurred in 1888 and 1889?

A. Yes, sir; it commenced perhaps in 1887, but we became aware of it more fully then.

Q. You were aware of it more fully in 1888 and 1889?

A. I would suppose so.

Q. Some of these notes were given after 1887, were they not?

A. They were renewals, sir.

Q. Some of them were given after 1887?

A. Two of them were given in 1887, one in 1888, and one in 1890.

Q. The one dated October 7, 1890, was given April —, 1888, was it not—that is, the debt was originally contracted and the notes taken?

A. Which one do you mean?

Q. I have the date October 7, 1890; that is the $2,100?

A. The $2,100 was April 13, 1888.

Q. The original note was given April 13, 1888?

A. Yes, sir.

Q. You took these same parties as security that was security on the other notes—that is, Harvey and Vance?

A. Yes, sir; Harvey and Vance was on that.

Q. And yet you say the shrinkage of their property began in 1887, perhaps, and along in 1888?

A. Yes, sir.

Q. It was more apparent in 1888?

179 A. Yes, sir; in 1888 and 1889 it was more apparent.

Q. Who was cashier of your bank July 26, 1890?

A. J. W. Thurston.

Q. These notes were outstanding at that time?

A. Yes, sir.

Q. When did you first learn that Mr. Vance, in accordance with an understanding with you, had taken a chattel mortgage on the stocks of goods in this Territory that belonged to W. F. Wolfe & Son?

A. I think immediately after it was done.

Q. Well, when was that?

A. That I couldn't tell you now.

Q. How did you learn it?

A. He told me.

Q. Whereabouts?

A. Topeka.

Q. That is, A. H. Vance told you?

A. Yes, sir.

Q. Had he just returned from here at that time?

A. Yes, sir.

Q. Did you release the personal security?

A. No, sir.

Q. You still held that?

A. Yes, sir.

Q. And you say Mr. Clark is perfectly solvent and good security for that $5,000?

Objected to as immaterial; which objection was by the court overruled; to which plaintiff excepted.

A. I don't know, sir, whether he is now or not; he is an old man and has suffered a good many losses.

Q. Well, how was it at the time this mortgage was taken?

A. About as he is now financially.

180 Q. You considered him good then?

A. We considered him good when the loan was made.

Q. Don't you consider him good at this time?

A. I rather think he is, sir; that is my judgment.

Q. Didn't you consider him good at the time this chattel mortgage was taken?

A. I would think so; yes, sir.

Q. Do you know whether you did or not?

A. Well, you have got to shake a man up sometimes before you know just how he is.

Q. You know what was considered. Did you consider him good?

A. Oh, yes.

Q. You did not shake him up much, did you?

A. Yes, sir; excepting suit.

Q. You never sued him?

A. No, sir.

Q. Do you know about what time Mr. Vance came to Oklahoma Territory, in the fall of 1890 or the winter?

A. No, sir; I do not; I couldn't give you the dates.

Q. Did you suggest to him to come down and get this security for you?

A. I couldn't tell you now; I have no remembrance now whether I did or not.

Q. Didn't he suggest that he go down and get it himself?

A. That I couldn't tell you.

Q. Did you testify in a case of John G. Miller & Co. against your Bank of Topeka regarding this matter?

A. I don't remember anything about it now.

Q. Do you remember of a letter that the cashier of your bank wrote to John G. Miller & Co. as to the financial condition of Wolfe & Son?

A. I don't know anything about it; never heard of it.

Redirect examination by Mr. JAMES:

Q. How did the decline, if any, of real-estate values of
181 Topeka in 1890 compare with the decline previously to that?

A. That is a very hard question to answer, because we only wake up sometimes to declines when we try to sell property; people are doubtful in holding to their properties; I think they perhaps more fully realized it in 1890 than any other time.

Q. I will get you to state what kind of a crop year 1890 was, if you remember.

Objected to as immaterial; which objection was by the court overruled; to which defendant excepted.

A. I believe it was good; that is my memory; I am not sure about it.

Counsel for defendant moves to strike out from the record all these notes and each one of them on the ground that they do not correspond with the notes set out in the petition; which objection was by the court overruled; to which defendant excepted.

The incorporation of the plaintiff Bank of Topeka, of Topeka, Kans., *as* is admitted by the defendants.

Testimony of Edwin Knowles.

EDWIN KNOWLES, being called as a witness for the plaintiff and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. JAMES.

Q. Mr. Knowles, you may state where you reside.

A. Topeka, Kansas.

Q. What relation, if any, do you sustain to the Central National Bank of Topeka, Kansas?

A. I am cashier.

Q. For how long have you been such cashier?

A. Since 1883.

Q. What indebtedness, if any, was owing your bank on December 15, 1890, by William F. Wolfe & Son?

A. Two thousand dollars; the notes are signed individu-
182 ally, not as a firm.

Q. To whom did the consideration, if any, from your bank pass?

A. To Wolfe & Son.

Q. The firm of Wolfe & Son?

A. Yes, sir.

Q. For how long has the firm of Wolfe & Son been owing your bank that $2,000?

A. There were two notes of a thousand dollars each. The first note was given April 6, 1889, for $1,000; the second note was given December 31, 1889, for $1,000.

Q. In what form or what was the nature of the indebtedness on December 13, 1890—in a note or otherwise?

A. Two promissory notes.

Q. Have you those notes?

A. Yes, sir.

Q. You may describe those notes.

Objected to as not the best evidence.

(Question withdrawn.)

Q. Are the notes which you now hold in your hands the notes that you refer to in your former answer?

A. They are.

The notes are marked Exhibits E and F and are offered in evidence.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

Counsel reads notes in the following words and figures:

$1,000.00. TOPEKA, KANSAS, *September* 6, 1890.

90 days after date we promise to pay to the order of Central national bank one thousand dollars and no $_{100}$ ($1,000), at Central national bank, for value received, with interest, at the rate of — per cent. per annum, after — until paid.

LOUIS H. WOLFE.
WILLIAM F. WOLFE.
A. H. VANCE.

183 $1,000.00. TOPEKA, KANSAS, *October* 13, 1890.

90 days after date we promise to pay to the order of Central national bank one thousand and no $_{100}$ dollars ($1,000), at Central

national bank, for value received, with interest, at the rate of 12 per cent. per annum, from due until paid.

LOUIS H. WOLFE.
WILLIAM F. WOLFE.
D. A. HARVEY.

Q. You may state, Mr. Knowles, what other security, if any, your bank has ever received or taken on such two notes you have mentioned in your evidence.

A. Outside of the personal security, you mean?

Q. Yes, sir.

A. They have no other security except the name of A. H. Vance on one and D. A. Harvey on the other.

Q. What mortgage security, if any, did your bank ever take or receive on said notes?

A. We never took any mortgage except this mortgage that is in this suit.

Q. That is what I want you to state in connection with that—what you had to do, if anything, with that mortgage; whether you had anything; whether you refused it or accepted it.

A. We were telegraphed the day the mortgage was taken that one had been taken for our benefit, and we telegraphed back, accepting the mortgage.

Cross examination by Mr. WISBY:

Q. That was the first information you had that a mortgage had been given?

A. Yes, sir.

Q. You received this telegram and wired back to accept?

A. Yes, sir.

Q. Who was the telegram from?

A. Louis H. Wolfe, I think it was—my recollection is now.

Q. This debt was originally contracted in 1889?

A. Both debts were. I can give you the dates of it.

184 Q. The same parties signed the original notes for the money?

A. Yes, sir.

Q. Were you cashier of the bank at that time—at the time it was loaned?

A. Yes, sir.

Q. What is your bank?

A. The Central national bank.

Q. Who did you pay that money to?

A. I couldn't day now who it was paid to. I think it was Louis H. Wolfe. That is my recollection about it. I couldn't say positively as long back as that.

Q. Have you any recollection as long back as that?

A. Yes, sir.

Q. Independent of the paper?

A. Yes, sir; I passed upon the loan at the time, in consultation with the president, at the time the transaction took place.

Q. You delivered the money to Louis H. Wolfe?

A. I delivered the notes to the assistant cashier, and directed him to pay the money?

Q. And he paid *to* to Wolfe?

A. I couldn't say exactly as to who it was paid it. I think it was paid to Louis H. Wolfe. That was my recillection.

Q. That was the way the transaction was conducted and the money was paid? You directed the teller to pay it?

A. The assistant cashier.

Q. And he paid the money?

A. Yes, sir.

Q. Now, that is all you know as to where that money went of your own personal knowledge, is it?

A. Only from statements.

Q. I am asking you for your own personal knowledge now as to where the money went to after it passed out of your bank.

185 All you know is what you testified to?

A. I know simply from the statement of Mr. Wolfe when he asked to borrow the money what he wanted it for; he said it was for Wolfe & Son.

Q. I am asking about your personal knowledge, Mr. Knowles.

A. That is what I am trying to give you.

Q. You have no personal knowledge of what business that money was put to after it left your bank?

A. Nothing but his statement.

Q. I am not asking for his statement, but your personal knowledge. The notes had been renewed from the time they were given originally until this last note?

A. There had been seven renewals of one and four of the other.

Q. You regarded your personal security as fairly good, did you not?

A. Not for the last six months' renewals we did not.

Q. Was there any effort made to collect?

A. Yes, sir.

Q. What is the date of these two notes that you have introduced in evidence?

A. They are right there.

Q. The last renewals are the two notes that you identified a few moments ago?

A. Yes, sir.

Q. One is September 6, 1890, and one October 13, 1890?

A. Yes, sir.

Q. Now, six months prior to that time you had regarded the personal security as insufficient?

A. No, sir; I did not say so.

Q. What did you say about it, please?

A. I said that for the last six months that we held the notes prior to this suit we regarded the personal security as insufficient.

Q. Six months prior to the bringing of the suit?

A. Yes, sir.

186 Q. When was this suit brought, do you know?

A. The attachment—I mean the attachment suits—not particularly this suit, but the attachment suit in December and the first of July—we were satisfied that our personal security was insufficient then, in July, 1890.

Q. Why did you take these renewal notes without exacting additional security then?

A. Because we could not get it. We had tried to get additional security, and we could not get it.

Q. Why did you let Wolfe & Son move all their property from Topeka if you were not amply secured?

A. Their property had been moved.

Q. In July?

A. Yes, sir.

Q. Was not the property moved, some of it, in July, 1890?

A. It was moved in June, 1890.

Q. Was not some of it moved as late as July?

A. I don't know it if there was.

Q. You knew that it was moved in June?

A. I did not at the time. I knew it after it was moved. I did not know of the last removal at the time; I knew of the first, but not of the last.

Q. At the time of the last removal, in June, you regarded these notes as perfectly good, did you not?

A. I did not regard the personal security as good as we thought it was at the time we made it.

Q. That is, in June?

A. In June I did not regard it as good as at the time we thought it was when we made it.

Q. Yet you allowed the property to be moved out of the State of Kansas.

A. I said I did not know it was going then.

Q. When did you first find out that it was gone?

187 A. I didn't know it until some — about a month afterwards. I don't know whether any one in the bank did or not; I did not.

Q. Then what steps did you take to strengthen your security?

A. We talked to Mr. Vance—Mr. Harvey was not there and we could not get at him—we talked to Mr. Vance several times and urged payment, and urged him to look after our interests and get the thing settled up.

Q. Did you make him your agent to look after these matters and settle up the debt with Wolfe, if you could collect off of Wolfe?

A. We did not make him an agent; no, sir.

Q. Didn't he tell you that he would probably come down here and induce Wolfe & Son to execute a mortgage on the stocks in this Territory to secure you?

A. No, sir.

Q. Nothing of the kind was said?

A. No, sir.

Q. And you knew nothing about the taking of a mortgage until

you were wired that a mortgage had been given to secure your notes, and you wired back that it was all right?

A. Yes, sir. The telegram we received from Mr. Wolfe was the first we knew of the mortgage.

Q. Did you know that Mr. Vance was down here and secured the mortgage for you and others?

A. I knew it when I received the telegram, and then I saw Mr. Vance, I think, the day after.

Q. The day after you received the telegram?

A. Yes, sir.

Q. He told you what he had been doing, and you ratified his action?

A. Yes, sir; in taking that mortgage.

Q. You accepted his work and ratified his action?

A. Yes, sir.

Q. Do you know the style of the firm under which William F. Wolfe and Louis H. Wolfe were doing business while they were in business in Topeka?

188 A. It was either Wolfe & Son or W. F. Wolfe & Son. My recollection is now W. F. Wolfe & Son.

Q. Was it not W. F. Wolfe & Sons while they were in business in Oklahoma?

A. Not that I know of. I never had understood that there was more than one of the sons in the firm.

Q. Did you know any other son besides Louis?

A. I knew another son there—yes, sir.

Q. What was his name?

A. I don't recollect it.

Q. Fred, was it?

A. I don't think I would know it when I heard it.

Q. You don't know, then, whether the firm was W. F. Wolfe & Sons or W. F. Wolfe & Son while they were in Topeka?

A. I would say that I never understood it to be sons. I understood it to be W. F. Wolfe & Son.

Q. Did you have any personal knowledge of the matter?

A. Well, my recollection is that I did. That is my recollection now—that the firm was represented to me by Mr. Wolfe to be just the father and son; not that there were other ones with him.

Q. You have a recollection of what he represented, and that is what you base your understanding on?

A. Certainly; from what he said.

Q. I would ask you what payment, if any, had been made on these notes since December 15, 1890.

A. None.

Q. Or at that time.

A. None.

Q. You are a national bank?

A. Yes, sir. I have the article of incorporation here, and charter.

The defendant admits the incorporation of the Central National Bank of Topeka, Kansas.

Defendant moves to strike out the last two notes which
189 were introduced, for the reason that they do not correspond with the allegations of the complaint; which motion was by the court overruled; to which defendant excepted.

Louis H. Wolfe's Testimony.

LOUIS H. WOLFE, being called as a witness for the plaintiff and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. JAMES:

Q. Where do you reside, Mr. Wolfe?
A. In Topeka, Kansas.
Q. How long have you last lived at Topeka, Kansas?
A. Since about the 1st of March, 1891.
Q. Where did you live just prior to that time?
A. In Guthrie, Oklahoma.
Q. And for how long did you live in Guthrie, Oklahoma?
A. From about the 5th of June, 1890, to the latter part of February or first days of March, 1891.
Q. Where did you live prior to your coming to Guthrie, Oklahoma?
A. At Topeka, Kansas.
Q. Next prior to your going?
A. Topeka, Kansas.
Q. And for yow long do you remember living at Topeka, Kansas?
A. Well, I had left there a time or two, but my home had been at Topeka, Kansas, since the 28th day of June, 1879.
Q. What relation, if any, did you sustain to the firm, if there was such a firm, of W. F. Wolfe & Son?
A. I was the junior partner of W. F. Wolfe & Son.
Q. And what relation, if any, did you sustain to W. F. Wolfe & Sons?
A. As a matter of fact, there was never a firm of William F. Wolfe & Sons. My brother was given a working interest in
190 the firm for about three months, and the firms with which we were doing business were notified that he had been given a working interest and had not put in any capital and had no capital interest in it. He then decided to study stenography.
Q. What was the age of your brother Fred at that time?
A. At what time?
Q. At the time you say—during the three months he was nominally associated with W. F. Wolfe & Son.
A. I would say about twenty or twenty-two; probably twenty years old.
Q. I will get you to state whether the firm of W. F. Wolfe & Son were debtors of Henry W. King & Co. in April, 1890.
A. Yes, sir.
Q. On account or note, or how?

A. Well, it was on a general account—an account for goods purchased.

Q. I will get you to look at the two papers I now hand you and state what they are.

A. Well, those are notes given to secure an open account, which we had with Henry W. King & Co.

Q. You mean to close up or settle an open account?

A. Yes, sir.

Q. I will get you to state what payments, if any, have ever been made by the firm of William F. Wolfe & Sons on the two notes that you have just mentioned.

A. As I recollect, on those two notes there were no payments made at all.

The notes are here marked Exhibits G & H.

Q. I will get you to state what was the consideration for those notes. What were those notes given for?

A. For goods purchased of Henry W. King & Co.

Q. They were wholesale clothiers of Chicago?

A. Yes, sir; they were wholesale clothiers of Chicago.

Q. I will now ask you, if your honor please, to read these two notes.

191 The two notes are offered in evidence.

Defendant objects to the introduction of the two notes as incompetent, irrelevant, and immaterial and not the notes described in the mortgage and as notes executed by the firm of W. F. Wolfe & Sons; which objection was by the court overruled; to which defendant excepted.

The notes are read in evidence in the following words and figures:

$654.27. TOPEKA, KANSAS, *April* 11, 1890.

On or before July 15, 1890, after due, we promise to pay to the order of Henry W. King & Co., Chicago, Illinois, six hundred fifty-four and $\frac{27}{100}$ dollars, at Topeka bank, Topeka, Kansas, value received, with interest at 8 % per annum from date, and exchange.

WILLIAM F. WOLFE & SONS.
A. H. VANCE.

$654.27. TOPEKA, KANSAS, *April* 11, 1890.

On or before August 15, 1890, after due, we promise to pay to the order of Henry W. King & Co., Chicago, Illinois, six hundred fifty-four and $\frac{27}{100}$ dollars, at Topeka bank, Topeka, Kansas, value received, with interest at 8 % per annum from date, and exchange.

WILLIAM F. WOLFE & SONS.
A. H. VANCE.

Q. I will ask you to look at the three papers which I now hand you and state what they are (handing witness papers).

A. They are three notes given to Tootle, Hosea & Co., of St. Joseph, Mo., in payment for goods purchased.

Notes are marked I, K, L, and each note is offered in evidence.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

The notes are read in evidence in the following words and figures:

$2,500.00. TOPEKA, KANSAS, *April* 9, 1890.

November 1st, 1890, we promise to pay to the order of Tootle, Hosea & Co. two thousand five hundred dollars, at their office in St. Joseph, Missouri, with interest at 9% per annum from date, value received.

W. F. WOLFE & SONS.
192 D. A. HARVEY.
A. H. VANCE.

Endorsements: 1890, November 6, cash $500; 12, 500; December 10, 500.

$2,800.00. TOPEKA, KANSAS, *April* 9, 1890.

December 1st, 1890, we promise to pay to the order of Tootle, Hosea & Co. two thousand eight hundred dollars at their office in St. Joseph, Missouri, with interest, at 9% per annum, from date, value received.

W. F. WOLFE & SONS.
D. A. HARVEY.
A. H. VANCE.

$2,800.00. TOPEKA, KANSAS, *April* 9, 1890.

January 1st, 1890, we promise to pay to the order of Tootle, Hosea & Co. two thousand eight hundred dollars at their office in St. Joseph, Missouri, with interest, at 9% per annum, from date, value received.

W. F. WOLFE & SONS.
D. A. HARVEY.
A. H. VANCE.

Q. I will get you to state what other notes, if any, except those you have mentioned and each of those we have just read to the jury, were owing by W. F. Wolfe & Sons to Tootle, Hosea & Co. on December 15, 1890.

Objected to as incompetent and not the best evidence; which objection is by the court overruled; to which defendant excepted.

A. There were no other notes except those owing to Tootle, Hosea & Co. or any one else.

Q. I will get you to state what payments, if any, have been made on said three notes to Tootle, Hosea & Co. or to any one else, excepting the three payments as endorsed on one of the said three notes.

A. There were no payments made except those three to Tootle,

Hosea & Co. or any of the banks. My recollection is that there were other notes which we had given to Henry W. King & Co. which were paid.

Q. I will get you to look at these notes to Henry W. King & Co. and what seems to be a credit on them.

193 A. Yes, sir; there is a credit on that of $250. My recollection is there were other notes besides that, and probably a payment on that note that I had forgotten. There was quite a number of those given.

Cross-examination by Mr. HORNOR:

Q. Are these the original notes which were given to Henry W. King & Co., Mr. Wolfe?

A. Yes, sir.

Q. How long had your company been running prior to the time when you gave these notes?

A. Well, that I cannot state; I do not remember.

Q. Was you in business in Topeka?

Objected to as incompetent and not proper cross-examination; which objection was by the court overruled; to which plaintiff excepted.

A. We commenced business in Topeka, to the best of my recollection, about the 10th or 12th of July, 1879.

Q. What was the style of the firm at that time?

Objected to as not cross-examination; which objection was by the court overruled; to which plaintiff excepted.

A. As I recollect it, it was William F. Wolfe & Son.

Q. Yourself and W. F.?

A. Yes, sir.

Q. Was there ever any change in the style of the firm?

A. Nothing except for a few months.

Q. When was that?

A. That must have been in 1889 or 1890—1889, probably.

Q. The style then was W. F. Wolfe & Sons?

A. Yes, sir.

Q. The firm was then composed of yourself and your brother and your father?

Objected to as calling for a conclusion; which objection
194 was by the court sustained; to which defendant excepted.

Q. Who composed the firm for the few weeks that you speak of?

A. William F. Wolfe, my father, myself, and my brother Fred.

Q. Now, give your best recollection when you began doing business with the firm of Henry W. King & Co.

A. Well, I would say in 1887; possibly it might have been 1888, but my recollection is about 1887.

Q. What was your object in giving these notes to King & Co.?

A. What was the object?

Q. Yes, sir.

A. They wished the notes, wished other security, asked for them, and we gave them.

Q. Did you give them because you were not able to pay them what you owed them at that time?

A. At that time I suppose our account was even at the bank, and we could not pay it.

Q. Even—your account was even at the bank?

A. Even, if there was no balance there to our credit.

Q. Was it uneven—was there any balance there against you?

Objected to as not cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Did they demand that you give security to them?

A. I don't recollect whether they did or not.

Q. Did you sign these notes yourself?

A. Yes, sir.

Q. Do you have any recollection of the fact of signing the notes?

A. The surrounding circumstances, you mean?

Q. Yes, sir.

A. No, sir; I cannot say that I have.

Q. You do not remember the circumstance of signing the notes?

A. No, sir; I don't remember just where I signed them; that is my signature.

195 Q. You don't remember the circumstances under which you signed the notes any further than you have stated?

A. No.

Q. You don't remember whether they demanded security of you or not?

A. No, sir; I do not.

Q. Was there any member of the firm of Henry W. King & Co. present when the notes were signed, or any of their traveling men or employees?

A. Well, I don't remember.

Q. Do you remember where the notes were signed?

A. They were signed in Topeka.

Q. What place?

A. That I couldn't say.

Q. Do you remember where Mr. Vance signed the notes?

A. No; I do not.

Q. Do you recollect any negotiations or correspondence or talk with Henry W. King & Co. at all with reference to the giving of these notes?

A. No, sir; I do not. I don't remember if there was any correspondence or if any of them came to Topeka or if I met them any place. My memory is at fault there.

Q. Then, as a matter of fact, you don't remember anything about the surrounding circumstances at the time these notes were given?

A. I don't remember what day or what week or what building or what day of the week or the place where I signed them; that is my signature, that I know.

Q. You have not tried to refresh your recollection about that?
A. Beg pardon?
Q. I did not ask you if you remember the day of the week or the room.
A. Well, I don't remember any of the surrounding circumstances, I said that before. There was nothing that refreshes my memory on that at all.
Q. What business are you engaged in now?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiff excepted.

A. Fire insurance.
196 Q. How long have you been engaged in that business?
A. Since the first of February, 1891.
Q. When did you leave Oklahoma Territory?
A. I think the latter part of February or first of March, 1891. I want to correct that other answer. I commenced my insurance business in 1892. I staid here after our failure until the latter part of February or the first of March of the succeeding year after that, 1891.
Q. Where did you stay?
A. At Guthrie.
Q. And then you went to Topeka?
A. I went to Topeka; yes, sir.
Q. Did you engage in business there?
A. No, sir; I did nothing there for several months.
Q. What were you doing here after the failure and prior to the time when you left?
A. I rented an office and tried to do some fire-insurance business and some life-insurance business.
Q. That was all?
A. That was all.
Q. Then, how long after you went to Topeka was it before you engaged in business?
A. Before I engaged permanently in business was until the first of February, 1892.
Q. There was about a year, then, that you didn't do any business?
A. Yes, sir; very nearly a year.
Q. You lived in Topeka during that time?
A. Most of the time; yes, sir.
Q. And what was the first business that you engaged in?
A. Fire insurance.
Q. You have been in that business, then, ever since?
A. Yes, sir.
Q. You have not paid anything on these notes, you say?
197 A. These King notes since the 15th of December, 1890?
Q. Yes, sir; you have not paid anything since September, 1890?
A. No, sir.
Q. Has there anybody else paid anything on them for you?

A. No, sir.

Q. Who paid this $250—that is, what individual?

A. I don't recollect that.

Q. You don't remember whether you paid it or your father?

A. No, sir.

Q. Do you know where the funds came from that it was paid with?

A. No, sir.

Q. I will ask you if it didn't come out of the business that you were engaged in here.

A. That I couldn't answer; I don't know.

Q. Did you have any other business or source of revenue in September, 1890, that it might have come from?

A. No, sir; nothing that I recollect now; we had nothing at all, except our business.

Q. Then your judgment would be that it was paid out of the business here?

A. Yes, sir; out of the receipts.

Q. Now, did you state—I ask for information—that there had been other notes given to King & Co.?

A. Yes, sir; that is my recollection.

Q. How many of them?

A. I couldn't say that; I think there were two others.

Q. How much were they?

A. I don't remember that.

Q. Could you give about the amount?

A. No, sir; I couldn't even do that.

198 Q. When were they paid off?

A. Well, they were paid—I couldn't tell what time, but they were probably all given at the same time, and the first notes paid off.

Q. After you came down here?

A. That I don't know; no; I don't think that was the case.

Q. You don't think that was the case?

A. No, sir; I incline to the opinion that they were paid before we came down here.

Q. When did you first come to Oklahoma?

A. At the opening of the Territory, 1889.

Q. And then where did you go—to what point?

A. Oklahoma city.

Q. Did you open up business there?

A. Not immediately; no.

Q. When did you open business there?

A. Probably the middle of June or first of July, 1889.

Q. When did you come to Guthrie?

A. About the 5th or 6th of July or June, 1890.

Q. You brought the balance of your stock down here?

A. Yes, sir.

Q. Now, these notes given to Tootle, Hosea & Co., do you know who signed them?

A. I can tell if I can see the signature; I didn't notice it when I looked at them.

Q. I will ask you if you have any recollection of it.

A. My recollection is that I signed them—signed the firm name.

Q. Do you have any recollection of the place where these notes were signed?

A. Yes, sir; they were signed at the Throop hotel, in Topeka, Kansas.

Q. At whose request?

A. Mr. James'.

199 Q. Who did he represent?

A. Tootle, Hosea & Co.

Q. He had come down from St. Joe, had he, to look after this account?

A. I don't know where he came from; he came thter to look after this account.

Q. Do you know where he lived at the time?

A. No, sir.

Q. Where did Tootle, Hosea & Co. have their headquarters?

A. In St. Joseph, Missouri.

Q. He came to you as their attorney to collect the account or get it secured?

A. Yes, sir.

Q. Were you able to pay this account at the time?

Objected to as not proper cross examination; which objection was by the court sustained; to which defendant excepted.

Q. How did you come to get Mr. Harvey to sign these notes?

Objected to as not cross-examination. Overruled. Exception.

A. I don't recollect that, whether I asked him or Mr. James desired some one else besides our own name on the notes.

Q. You don't recollect that?

A. No, sir.

Q. Do you recollect where Mr. Harvey signed the notes?

A. My recollection is at the Throop hotel, in Topeka.

Q. Do you have a recollection of the subject so that you can say that you remember it?

A. I couldn't say that I remember if Mr. Harvey signed at my request or at the request of Mr. James.

Q. Where did Mr. Vance sign the notes?

A. I presume at the same place.

Q. How did you come to have Mr. Vance sign the notes?

A. My recollection is just as misty on that as it is on Mr. Harvey signing them; I don't remember whether it was at my re-

200 quest of Mr. James' that Mr. Harvey and Mr. Vance signed those notes.

Q. Well, I will ask you, to refresh your memory, if you didn't have these parties sign because they demanded that you have somebody sign them besides yourselves.

Objected to as not proper cross-examination and immaterial;

which objection was by the court overruled; to which plaintiff excepted.

A. I don't remember if Mr. James demanded or if Tootle, Hosea & Co. demanded their signature besides our own. My judgment would be that they did.

Q. Well, I move to strike out the judgment. I don't want the opinion of an expert. I just want what he remembers.

A. Well, I have no recollection on the subject at all, sir.

Q. You mean when you say that your judgment is that they demanded it that that is your best recollection of the subject?

A. No, sir. My recollection on the subject is that I don't remember anything about their making a demand or not making one. My judgment at this time would be that in a case of that kind that a firm would probably demand additional security.

Q. In a case of that kind?

A. In a case of any kind when any company or any firm takes security they get all they can.

Q. Have there been any payments on these notes excepting those which are endorsed on the back?

A. No, sir.

Q. Not by any person?

A. No, sir.

Q. Have Tootle, Hosea & Co. made any demand upon you to pay these notes since your failure down here?

Objected to as not cross-examination; which objection was by the court sustained; to which defendant excepted.

201 Q. I will ask you to state whether or not you have been able to pay anything on these notes since your failure down here.

Objected to as not cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Do you own any property in Topeka at this time?

Objected to as not proper cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. I will ask you if you know who made this payment on the $500 note to Tootle, Hosea & Co. of November 6, 1890.

A. I made it.

Q. Out of what funds?

Objected to as not cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Do you remember who made the payment of $500 of November 12, 1890?

A. My recollection was, when I answered that I made it on November 6th, that that was the last payment. I made the last payment that was made there, whether it was dated November 6th or 12th. The other two payments I don't know who made them, whether I made them or father made them.

Q. You made the last payment?
A. I made the last payment.
Q. Do you remember what the date of that was?
A. No, sir; I thought it was November 6th.
Q. Do you remember what the amount of it was?
A. $500.
Q. Well, I will state to you for your information that it was on December 10, 1890, and I will ask you now out of what funds that payment was made.

Objected to as not proper cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Do you say that you don't know who made these other two payments?
A. I don't know if father made them or I made them; I don't remember it.
Q. Where were you when the payment of December 10th was made?
202 A. In Guthrie.
Q. How did you make that payment?

Objected to as immaterial and not cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. You were not engaged in business elsewhere than in Oklahoma at the time these payments were made?

Objected to as not cross-examination and immaterial; which objection was by the court overruled; to which plaintiff excepted.

A. No, sir; we were not engaged elsewhere in business than in Oklahoma Territory.
Q. When did you begin to do business with Tootle, Hosea & Co.?

Objected to as not cross-examination; which objection was by the court overruled. Exception.

A. I would say that we commenced business with them probably about 1874 or 1875.
Q. Where were you doing business with them?
A. In Topeka. I mean 1884 or 1885.
Q. Were there any other notes given to Tootle, Hosea — than these three?
A. I think not.
Q. You think not?
A. I think not.
Q. Were these notes given for the purpose of closing your account with Tootle, Hosea & Co.?
A. Well, I don't remember that if it closed our account or if we bought goods of them afterwards.
Q. It closed it up to that date, did it not—up to that time?
A. Yes, sir; it closed it up to that date.
Q. Did you buy any goods of them subsequent to that time?

Objected to as not cross examination and immaterial; which objection was by the court overruled; to which plaintiff excepted.

A. I don't remember that we did.

203 Q. Did you try to.

Objected to as immaterial; which objection was by the court sustained; to which defendant excepted.

Q. Have you made any effort to pay anything on these notes since that failure, Mr. Wolfe?

Objected to as immaterial and not proper cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Have you given Tootle, Hosea & Co. any security on these notes?

A. Gave them a chattel mortgage on our stocks at Oklahoma city and Guthrie.

Q. Anything else?

A. No, sir.

Q. When was the last time that they demanded payment of you of these notes?

Objected to as not cross-examination and immaterial; which objection was by the court sustained. Exception.

Q. Do you say that the firm of Wolfe & Sons was a short time—I wish you would state that again; I don't exactly remember it—the time when it was Wolfe & Sons.

A. Well, it was 1889–1890.

Q. And about what months?

A. I couldn't say as to that.

Q. Do you remember the season of the year?

A. No, sir.

Q. Well, was it at the time these notes were signed?

A. I presume it was, as they were signed W. F. Wolfe & Sons.

Q. And those notes were signed in April, 1890. Then, according to your evidence, it was for a few months along about April, 1890, that the firm was Wolfe & Sons?

A. Yes, sir.

Q. Now, is your recollection clear on that?

A. No, sir; it is not; it is rather indefinite.

204 Q. In what regard?

A. Well, I was not consulted about the matter at all, knew nothing about it at all until several weeks after the notice had been sent to the different firms with whom we were doing business, and rather objected to my brother's having any interest in the firm at all.

Q. Well, I don't know that that exactly answers the question. You said that you were not very clear, and I asked you in what particular, as to what?

A. I am not clear as to the date when the change was made or

the season of the year it was, and was not clear until you mentioned the dates on those notes as to the year.

Q. I will ask you if the firm was not Wolfe & Sons as early as 1888.

A. I think not; I don't recollect that it was.

Q. Was your opportunities such that you would probably know if it was?

A. Yes, sir; I would judge that it would be.

Q. And you don't recollect as it was?

A. I don't recollect that it was.

Q. If it was only for a few months along about April, 1890, then it couldn't have been as early as 1888?

A. That would be the way I would look at it; yes, sir.

Q. Was it not Wolfe & Sons during the year 1889?

A. No; I think not.

Q. Now, I will ask you one more question so as to make this as clear as possible. When you say a few months, what do you mean by a few?

A. Well, I would call twelve or fifteen months a few months.

Q. You would call that a few; you would call that a year, would you not?

A. I would call it a few months; that is the way I express it.

Q. Now, I will ask you, Mr. Wolfe, to look at that signature and state if you know whose it is.

A. No, sir; I wouldn't swear to that signature at all.

Q. You don't know whose it is?

A. No, sir.

Q. Have you any judgment as to whose it is?

A. I have an opinion as to whose it is; yes, sir.

205 Q. Whose, in your opinion, is it?

A. In my opinion that is my father's signature.

Paper identified is marked Exhibit M.

Q. You have seen your father's signature?

A. Yes, sir; I have.

Night adjournment.

Q. Mr. Wolfe, referring to the notes which were given to Henry W. King & Co., which we had here yesterday evening, I will ask you to state if you know who owns those notes now.

Objected to as not cross examination; which objection was by the court overruled; to which plaintiff excepted.

A. To the best of my knowledge, Henry W. King & Co. still own them.

Q. Do you know anything about those notes having been transferred in any way?

A. No, sir.

Q. Do you mean that you don't know of your own knowledge or that you don't know in any way?

A. I don't know in any way.

Q. Do you know whether anybody has paid Henry W. King & Co. anything on those notes excepting what is endorsed on the back of them?

A. No, sir; I don't know that anything has ever been paid on them except that endorsement on the back.

Q. When you say that you don't know that anything has ever been paid except what is on the back, do you mean that you don't know of your own knowledge or that you don't know in any other way?

A. I don't know in any way at all.

Q. You have any information on that?

A. No, sir; I have no knowledge of anything having been paid on them.

Q. Now, with reference to the Tootle, Hosea & Co. notes, do you know whether anything has been paid on those notes?

A. I do not know of anything having been paid on those notes except what was endorsed on them.

206 Q. Do you know who owns those notes at the present time?

A. Tootle, Hosea & Company, to the best of my knowledge, or their successors in business.

Q. You don't know anything of those notes having been transferred to any other person, either by delivery or any other way?

A. No, sir.

Redirect examination by Mr. JAMES:

By Mr. JAMES: Now, with reference to the Tootle, Wheeler & Motter matter, I think we may make an agreement as to the facts in the record. We have a witness upon the mere formal matter, and I think we agreed upon it last night, unless there is some misunderstanding. It is simply that the firm of Tootle, Hosea & Co. was succeeded by Tootle, Wheeler & Motter, who have been substituted in his case, and the firm of Tootle, Wheeler & Motter purchased these notes from the old firm of Tootle, Hosea & Co.

By Mr. HORNOR: I would suggest that you spoke of that yesterday evening, and we were rather inclined to agree to it that that might go in the record, but I believe we would prefer now to defer that until about the close of the evidence, and then we will make a definite answer with reference to the mere formal matter.

Testimony of A. H. Vance.

A. H. VANCE, being called as a witness for the plaintiff and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. JAMES:

Q. Mr. Vance, where do you reside?

A. At Topeka, Kansas.

Q. How long have you lived there?

A. Twenty-five years.

Q. What is your business?

A. Lawyer.

207 Q. How long have you been practicing law there?

A. Twenty-five years.

Q. I will get you to state what indebtedness, if any, was owing by W. F. Wolfe & Son or W. F. Wolfe & Sons to yourself on December 15, 1890, and, if any, in what form such indebtedness was.

A. The face of the indebtedness was 1900, with interest that had accrued, evidenced by three notes.

Q. Have you the notes with you?

A. I have.

Q. Are the three papers now held in your hand the notes you have reference to?

A. Yes, sir; these are the notes I refer to.

The notes are marked Exhibits N, O, P, and are offered in evidence; to each of which defendant objects for the reason that the same are incompetent, irrelevant, and immaterial, and do not correspond with the allegations of the complaint; which objection was by the court overruled; to which defendant excepted.

The notes are read in evidence in the following words and figures, to wit:

$1,000.00. TOPEKA, KANSAS, *September* 21, 1888.

60 days after date we promise to pay to the order of A. H. Vance, at the law office of Vance & Campbell, Topeka, Kansas, one thousand & no $\frac{}{100}$ dollars, with interest at the rate of — per cent. per annum; appraisement waived.

WILLIAM F. WOLFE.
LOUIS H. WOLFE.
FRED W. WOLFE.

Endorsed as follows: Pay to the order of Ella A. Vance. A. H. Vance.

$600.00. TOPEKA, KANSAS, *December* 8, 1888.

60 days after date we promise to pay to the order of A. H. Vance, at the law office of Vance & Campbell, Topeka, Kansas, six hundred and no $\frac{}{100}$ dollars, with interest at the rate of ten per cent. per annum, value received; appraisement waived.

WILLIAM F. WOLFE.
LOUIS H. WOLFE.

208 $300. TOPEKA, KANSAS, *August* 26, 1889.

30 days after date we promise to pay to the order of M. T. Campbell, at the law office of Vance & Campbell, Topeka, Kansas, three hundred and no $\frac{}{100}$ dollars, with interest at the rate of ten per cent. per annum, value received; appraisement waived.

A. H. VANCE.
W. F. WOLFE & SON.

Q. You may state to the jury how you came to be the holder of these notes, and the circumstances.

A. The money that was first loaned, except on the $300 note, was money that I had of my sister's to loan, which I loaned to them and took these notes in my own name, and the $300 note was a note made to Mr. Campbell, my partner, which I took up with $300 of her money; and in May, 1890, I mortgaged my house and paid these notes off to her, and they became my notes.

Q. Now, who got the consideration for these notes?

A. W. F. Wolfe & Son.

Q. I will get you to state what, if any, security you ever had by way of chattel mortgage for the indebtedness growing out of these notes, as testified to by you.

A. I took the chattel mortgage—the chattel mortgage which is spoken of here in evidence—to secure that indebtedness to me at the same time that the chattel mortgage was taken to secure the other indebtedness.

Q. I will ask you what payments, if any, have been made on said total indebtedness to you or upon the chattel mortgage since the making of the chattel mortgage.

A. None whatever.

Cross-examination by Mr. HORNOR:

Q. Your name is A. H. Vance?

A. Yes, sir.

Q. What relation are you to Mr. W. F. Wolfe?

209 A. I am his son-in-law.

Q. You say that these notes were given on account of a loan that you made to them, do you say?

A. Yes, sir.

Q. Was the loan made at the same time these notes were given?

A. Yes, sir.

Q. You did not let them have the money all at the same time, then?

A. No, sir.

Q. Will you state who your sister was that you got this money from?

A. Sarah A. Vance is her name and Ella A. Vance, two sisters.

Q. You had it from two sisters?

A. Yes, sir.

Q. Did you get the money for the specific purpose of making these loans?

A. No, sir.

Q. How did you come to have the money?

A. They had some money from some property that had been sold which I had in my hands and was loaning for them.

Q. I didn't exactly understand your first statement. Were these the original notes which were taken for the indebtedness?

A. Yes, sir.

Q. Did your wife have anything to do with this transaction?

A. No, sir.

Q. Did she come into the transaction in any way subsequently?

Objected to as not cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Did you state that you mortgaged your house and took up these notes?

A. Yes, sir.

Q. Well, did Mrs. Vance have anything to do with that transaction?

A. She joined in the mortgage.

Q. And you raised the money on your house, then, to pay the money owing to your sisters?

A. Yes, sir.

210 Q. When was that?

A. That was in May, 1890.

Q. Now, how did you say this M. T. Campbell note comes in here?

A. My partner loaned $300 on the note when it was first made; that money was gotten from him, and then I took up that note with $300 of my sister's, and then afterwards it became part of my own by my taking it up.

Q. Then you did not originally make the $300 loan?

A. No, sir; it was made through me.

Q. Do you mean to say that you paid Mr. Campbell back this $300?

A. Yes, sir.

Q. Who paid it to him?

A. I did.

Q. How did you pay it?

A. I paid it in money.

Q. When?

A. When it became due on its face.

Q. Do you remember when that was?

A. My recollection is that note was drawn for thirty days. I don't remember the date of it now.

Q. Do you remember the date of the note?

A. No, sir.

Q. Do you remember the year?

A. I am not certain; it is either 1888 or 1889.

Q. Are you certain that you paid this to Mr. Campbell when it was due?

A. No; I wouldn't say that I am certain; it might have been not just when it was due; it might have been some thirty days afterwards. I do not know, but I paid it.

Q. When did you make that loan on your house?

A. I made the loan on the house, as I said to you, in May, 1890.

Q. How much did you borrow?

A. $2,500.

211 Q. Have you been the owner of these notes which were given to yourself ever since they were given?

A. No, sir; I was not the owner when they were given to me.

Q. Who was the owner?

A. My sisters were the owners of those, because it was their money that was in them.

Q. But you just had them made in your name?

A. Yes, sir.

Q. Have you been the owner of the notes ever since you took them up by paying them off?

A. I have.

Q. How does this endorsement come on here, pay to the order of Ella A. Vance, A. H. Vance?

A. That was endorsed to her in that way at the time the loan was made because it was her money.

Q. Then you have not been the owner of this one all the time, then, have you?

A. Ever since I took it up; yes, sir.

Q. Please state who Ella A. Vance is. Is that the sister or Mrs. Vance, your wife?

A. My sister.

Q. Why didn't you endorse the $600 note to her?

Objected to as incompetent; which objection was by the court overruled; to which plaintiff excepted.

A. No reason that I know of.

Q. Now, I want to ask you if this note does not belong to Campbell yet.

A. It does not, sir.

Q. Why didn't he put his endorsement on it when he gave it to you, sir?

A. I don't know why he didn't.

Q. I want to ask you another thing—when you came down here if you didn't just bring this note, Campbell's note, down here and put it in yourself in that mortgage simply to try to save
212 something out of it for him.

A. I did not.

Q. And if he didn't simply pass this note to you without any endorsement on it.

A. If it is not endorsed he passed it to me without any endorsement on it, but long before that.

Q. Now, are you able to state any reasons why he did not endorse it?

A. No, sir; I simply neglected to have it done.

Q. You did not require any endorsement at all when he turned it over to you and it became your property?

A. If it is not endorsed I did not.

Q. And you mean to state that at the time you came down here in December and took that mortgage and put this note in there that Campbell had nothing to do with it?

A. I do say that emphatically.

Q. Had no interest in it, either remote or direct?

A. He had none whatever of any kind or character.

Q. Now, I want to ask you, Mr. Vance, if this indebtedness had

not been paid long prior to the time when you came down here in December and took that mortgage.

A. It had not.

Q. I want to ask you if you did not testify in the former trial in this court, in the case of E. S. Jaffray & Co. against Wolfe & Son, that it had been paid.

A. I did not.

Q. I want to ask you if W. F. Wolfe did not transfer to you or to Mrs. Vance, by an absolute deed of warranty, real estate in Topeka, Kansas, of the value of about ten thousand dollars in settlement of these notes.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiff excepted.

A. No, sir; they transferred to me (interrupted)——

Q. Just answer yes or no.

213 A. They transferred to me in July, I believe it was; not to me, but to my wife, in July, 1890, if I remember the date correctly, a piece of property in Topeka as security for those notes. The deed, it was absolute on its face, but it was taken as security on those notes, and that property was already encumbered to the amount of four thousand dollars.

Q. That was in July, 1890?

A. I think that was the date. It was some time in July.

Q. Now, what was that property worth, Mr. Vance?

A. I thought it was worth about eight thousand dollars. That was my judgment about it. I simply was intending to state that that was my judgment at that time.

Q. What was the size of the lot?

A. 122½ by 205 feet in depth.

Q. What addition or part of Topeka was it in?

A. It was what they called the Potwin Place addition.

Q. Now, I will ask you if that was not a very aristocratic quarter of Topeka.

A. No, sir.

Q. What was the lot worth?

A. When do you mean?

Q. In 1890—the lot itself?

A. That is a very difficult question to answer. I can give what I think.

Q. I will ask you if the lot was not worth about five thousand dollars.

A. No, sir; it was not; never was worth that.

Q. I will ask you if that was not the regular and usual price those lots were selling at, $5,000.

A. There never was one sold in there for that price at any time.

Q. What did they sell for?

A. The highest that I ever knew of any selling for was $2,500.

Q. What was the house worth that was on that lot?

214 A. Well, it was property that cost—the improvements on the lot cost about $5,500. That was my recollection.

Q. Now, at the time you got this property, in July, 1890, the property was in perfect repair, was it not?

A. Yes, sir.

Q. And you say that was conveyed to you as security?

A. Yes, sir.

Q. I want to ask you if you did not testify in the other trial that I have referred to that that property was sold to your wife by the Wolfes.

A. I don't think I testified to any such thing.

Q. I want to ask you if you did not state in that trial that that property was sold by W. F. Wolfe to your wife, and that subsequent to that time or from that time on Mr. W. F. Wolfe never owned property of any kind, shape, or manner in Topeka.

A. I have no recollection of making any such statement as that in any way.

Q. I will ask you if you did not say in this way that that property was sold to your wife in July, 1890.

A. I wouldn't say that I did not say that; I don't know; my recollection is about my testimony in that case that I explained it just as I stated now. There was an absolute deed to my wife of that property which was given to secure this indebtedness.

Q. Taken as security?

A. Yes, sir.

Q. Now, I want to ask you if the consideration for that deed was not $6,500.

A. I presume it was; I think it was.

Q. It was intended, you say, to secure $1,900?

A. Yes, sir.

Q. Will you explain how you put in that deed $6,500 consideration if it was only intended as security for $1,900?

A. The only reason that I can give why that should have been done was because there was a four-thousand-dollar mortgage on the property.

215 Q. That is the only reason that you can think of?

A. Yes, sir.

Q. I will ask you if that property was not estimated to be worth ten to twelve thousand dollars, and there was a mortgage of $4,000 on it, and you put the $6,500 in there so as to represent the real value of the property, less the incumbrance?

A. Not at all, sir; no, sir.

Q. I want to ask you if you did not, all of you up there, commonly consider that that property was worth ten to twelve thousand dollars.

A. No, sir; I never did.

Q. You never did?

A. No, sir; I presume it has been considered by persons worth that amount of money at one time during the boom days.

Q. You did not put in the $6,500 there to represent the difference between the mortgage and what the property would be worth if the mortgage was not on it?

A. Not at all, sir.

Q. Well, I am going to ask you the question because I don't understand. Do you say that you put the $6,500 consideration in the deed because there was a mortgage of $400 on it? I don't understand exactly about that, why you put it at that. In other words, what was the relation between the $4,000 mortgage and the $6,500 in the deed?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiff excepted.

A. There was $2,500 that I raised on my house and taken up these notes. There was a large amount of interest which had accumulated on these notes at the time that I took them up, and the $2,500 and the $4,000 made the $6,500. That was what was in mind when I prepared that deed, simply showing the full amount of the encumbrance that was upon the property, this being a deed upon its face, but in fact simply a mortgage. I simply added
216 in the amount of the encumbrance that was on the property besides that in the face of this deed.

Q. You did not testify on the other trial, Mr. Vance, that this deed was a security, did you?

A. That is my recollection that I did.

Q. Why did you say it was a security; did you agree that it was?

A. Yes, sir.

Q. Was that agreement made with Mr. Wolfe, or whom?

A. Mr. Wolfe.

Q. Did he require that agreement before he would sign the deed?

A. No, he did not, so far as I know; it just occurred this way: After I had taken up those notes in May and that property was there I suggested that if there was any margin in that property there above the mortgage that was on it that we should have the benefit of it until this indebtedness to me was paid, and I prepared the deed and wrote a letter to that effect and sent it, and requested it to be signed if it met their approbation and sent back, and that was done. I didn't have any personal interview with Mr. Wolfe at the time about it at all.

Q. Well, was not that security ample for the amount of the indebtedness that was against it?

A. It was not, as it turns out; I tried to make it out of that property in every way that I could, excepting to offer the property for sale at a foreclosure.

Q. Sir?

A. I have tried to make it out of that property by trying to sell the property ever since and never have been able to do it; there is no sale for property.

Q. You considered that that piece of property there was ample security at the time you took it—took that mortgage, if it was a mortgage?

A. Why, I thought there was that margin in the property over

and above the $4,000 mortgage, but a $4,000 mortgage on
217 any property does not make it very good security. I thought it was worth a good deal more than the four thousand dollars, and it ought to be worth more, but it never has—never have been able to make it pay it.

Q. Now, in your judgment, that property in July, 1886, was worth $8,000?

A. That was my judgment; yes, sir.

Q. Did you put the deed on record that you got to that property?

A. I did not know that I did not until afterwards.

Q. How long afterwards?

A. I believe it was not put on record until some time in December.

Q. How long after this chattel mortgage was given?

A. A short time afterwards; I don't know the exact days.

Q. When was the chattel mortgage given?

A. On the 15th of December, 1890.

Q. Were you down here at that time?

A. I was.

Q. Did you go back to Topeka?

A. I did.

Q. When did you go?

A. It was either the 16th or 17th, I am not sure which now.

Q. I will ask you if that deed was not put on record on the 17th of December.

A. It may be; I don't know.

Q. It was put on record just as soon as you got home, was it not?

A. Yes, sir.

Q. Why didn't you put it on record before that?

A. There was no reason that I know of at all, excepting that I presume it was forgotten. That deed was made to my wife, and when it was received there I simply handed it to her and didn't think anything more about it; left it with her; she had it when it was put on record.

Q. You did not remember anything more about it until right after this chattel mortgage was given?

218 A. Yes, sir.

Q. Did you forget all about having the deed from July until December, when the chattel mortgage was given?

A. No, sir.

Q. Were you under the impression that the deed was on record?

A. I didn't think anything about it one way or the other.

Q. Why did you come to think about it as soon as you got back to Topeka after taking this chattel mortgage?

A. Because, of course, this created a discussion with reference to that, not with regard to its being on record, but the condition of things, and my wife got that deed and I discovered that it was not on record. I had not thought anything about it before then.

Q. I want to ask you if you did not talk repeatedly about having that deed and about the fact that it was not put on record before it was put on record.

A. Who to?

Q. To the Wolfes and to your wife and Judge Clark and all your relatives up there.

A. I had not ever mentioned it from the time I got it until then.

Q. You never mentioned it to anybody?

A. No, sir—that is, the fact that it was not on record.

Q. You did not tell anybody about having it?

A. Yes, sir. They all knew, I suppose—I don't know whether they did or not—that I had the deed.

Q. And you say that you never had any talk about the fact that it was not put on record or about keeping it off the record or anything of that kind?

A. I did not with anybody.

Q. It was just a mere inadvertence?

A. Yes, sir.

Q. And there was nothing in the condition of Wolfe's
219 affairs that led you to correct that inadvertence?

A. I don't know what you mean.

Q. I mean that there was nothing in the course of their business or their financial condition or anything of that kind that impelled you to go and put that deed on record up to the time that you did do it.

A. You mean between the time I had it until it went on record?

Q. Yes, sir.

A. No, sir.

Q. Was there anything that made you think that you had better put it on record before it was put on record?

A. No, sir.

Q. I want to ask you if you did not know the Wolfes were insolvent from the time when they came from Topeka down here and during all the time that they were here.

Objected to as not cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. I want to ask you if you did not know the Wolfes were insolvent at the time you took that deed.

Objected to as incompetent and improper cross examination; which objection was by the court sustained. Exception.

Q. Why did you demand that deed from Mr. Wolfe?

Objected to as not cross-examination; which objection was by the court sustained. Exception.

Q. When this deed was turned over to you who was living in the property?

Objected to as incompetent and immaterial; which objection was by the court sustained. Exception.

Q. After the deed was taken did you take possession of the property?

Objected to as last above. Overruled. Exception.

A. I did not.

Q. Did Mrs. Vance?

A. She did not.

220 Q. Did anybody for you or her?

A. No, sir.

Q. Was there any change in the possession of the property?

Objected to as indefinite and not proper cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Was there any change in the possession of the property at the time or about the time of the filing of this deed?

A. Mr. Wolfe and Mr. Wolfe were not there, but they were in Oklahoma at the time this deed was made, and I am not certain now whether the property was rented then at that particular time or not; it had been, I think, before and was afterwards, and when it was rented we collected the rent and sent it to them, part of the time it was occupied and part of the time it was not. The possession was not changed, excepting that it was occupied by tenants when it was rented, and the rents was sent to Mr. and Mrs. Wolfe for a part of the time, and then the first mortgagees, the interest not being paid, was threatening foreclosure, and the rents were turned over to the first mortgagee until about a year ago last July.

Q. Did you or Mrs. Vance take possession of that property when that deed was made?

A. Just in the way I told you.

Q. How long did you state you had been an attorney, Mr. Vance?

A. Twenty-five years; a little longer than that.

Q. Living in Topeka during that time—most of the time?

A. All the time for twenty-five years.

Q. I want to ask you if you did not testify in the other trial of the case of Jaffray *vs.* Wolfe that at the time this deed was taken or at any other time with reference to it that there was nothing whatever said about this deed being intended as a security?

A. I do not remember making any such statement as that;

221 I would say I did not; my recollection is that I explained that it was taken in that way.

Q. Taken as security?

A. Yes, sir; if you mean by that question that there was not anything said by Mr. Wolfe, well, I perhaps did say that, because I had no personal communication with him at all about it.

Q. Nothing was said about it being a security at the time you took the deed from Mr. Wolfe?

A. I presume I said that if that question was asked me in that way.

Q. And nothing ever had been said up to the time that you testified in that trial to the effect that that was a security; was not that what you testified to as between you and Wolfe?

A. Perhaps I did; I don't remember that now; I don't remember; perhaps I did say that, as a matter of fact, it was between Mr. Wolfe and I.

By Mr. JAMES: You say that there had been no conversation between you to that effect?

A. The question that I was answering Mr. Wisby was that I had testified I supposed before that there was not any conversation between Mr. Wolfe and I in regard to it—a personal conversation.

Q. But what was your recollection as to whether there had been any communication between you or not?

A. That was intended in that way, and I always treated it that way, for the reason that there was no conversation about it; they had the benefit of the property as they had before.

By Mr. WISBY: You testified before that there was a communication sent by you to Mr. Wolfe at the time you requested the execution of this deed to the effect that it was a mortgage?

A. I don't recollect whether I did or not.

Q. Now, didn't you testify in substance before that there was nothing said between you and Mr. Wolfe at the time or before the execution of this deed to the effect that it would be treated
222 as a security; that you had just thought over the matter in your own mind, and concluded that if there was anything left over after you sold the property and paid your debt that you would give it to Mr. Wolfe; that you and your wife had talked over it to that effect, but as a matter of fact nothing had passed between you and Mr. Wolfe to that effect, and that it was not treated as a security?

A. I do not recollect stating it in that way at all.

Q. You have no recollection of stating it substantially in that way?

A. No, sir; my recollection is that I stated it substantially as I have stated it here, although much more fully here, if I recollect right, than I did at that time.

Q. Your recollection is now that you sent a communication to Mr. Wolfe in which you requested the execution of this deed, and that it should be treated as a security?

A. I wouldn't say just how it was stated in that communication, but I sent a communication with the deed requesting that the deed be signed and an explanation of why, and the deed was returned in pursuance of that. That certainly was the way it was done, because there was no fraud.

By Mr. JAMES: On what property was this mortgage given that you say your wife joined in to secure the $2,500?

A. That was on my home property there in Potwin place.

Q. Your homestead?

A. Yes, sir; my homestead.

Q. It was your property, and you put the mortgage on it?

A. Yes, sir.

By Mr. WISBY: You got the money on your homestead to pay off this indebtedness?

By the COURT: I think he has testified fully as to that.

Q. Then when the debts were paid back to you from Wolfe you put the title in your wife's name, did you not?

A. The debts were never paid back.

223 Q. Well, when they conveyed by deed the Topeka property to your wife, that was for security for this debt, was it not?

By the COURT: I think he has testified fully as to that.

By Mr. JAMES: Why was it given to your wife, Mr. Vance?

A. I say it was given to my wife because the money that was raised to pay off these notes was taken on our homestead. That was the reason.

By Mr. WISBY: Was it not because you were largely involved in debt yourself and wanted to save yourself?

A. No, sir. I never thought of that at the time.

Testimony of Louis H. Wolfe.

LOUIS H. WOLFE, being recalled for further cross-examination, testified as follows:

Cross-examination by Mr. HORNOR:

Q. Please state, Mr. Wolfe, what relation John T. Clark is to you.
A. I don't know John T. Clark at all.
Q. I mean J. T. Clark.
A. He is my father-in-law.
Q. He is the party who signed some of these notes?

Objected to as not proper cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. What relation is D. A. Harvey to you?
A. My uncle.
Q. What relation is A. H. Vance to you?
A. My brother-in-law.

Plaintiff offers in evidence the copy of the chattel mortgage referred to in the petition and admitted by the answer.

Objected to as incompetent, irrelevant, and immaterial for the reason that the court has no jurisdiction of the subject-matter of this action, and that the plaintiff *has* not pursued the remedy which the law gave them, if they had one, and for the further reason that there is a variance between the notes or indebtedness described in the mortgage and that proven by the notes introduced in
224 evidence, and *and* for the further reason that it is not the best evidence and no foundation laid for the introduction of a copy.

By the COURT: If the defense has the original and plaintiff demands it of you and you fail to produce it, they can then introduce the certified copy. Let the record show that the attorneys for defendant admit that the original is in their possession or has been in their possession since its execution, and that at this time they are not able to produce it, but that the defendant demands the production of the original, which it is admitted is in the possession or under the control of the defense, and that the same is at this time either mislaid or lost and cannot be produced, but will be produced

by defendants before the expiration of this case; and thereupon the court overrules the objection of the defendant to the reading of the copy, the same, upon its face, appearing to be a certified copy, which is introduced in evidence, with permission to defendant to produce the original chattel mortgage at any time before the expiration of the case.

Mr. James reads the mortgage in evidence in the following words and figures:

Chattel Mortgage.

Know all men by these presents: that we, W. F. Wolfe & Son, parties of the first part are indebted to A. H. Vance, D. A. Harvey, and J. T. Clark, the Bank of Topeka, Topeka, Kansas, the Central National Bank of Topeka, Kansas, Henry W. King & Co. of Chicago, Ill. Tootle, Hosea & Co. St. Joseph, Mo. parties of the second part, in the sum of 22,048.54 dollars with interest on said sum as follows: $2,100 on note due Bank of Topeka, Topeka, Kansas, Jan. 28, 1891 with interest at 10 % after maturity; $2,000 on note due Bank of Topeka Topeka, Kansas, Nov. 22, 1890, with interest at 10 % per annum from said date; $1,000 on note due Bank of Topeka, Topeka, Kansas, Dec. 15, 1890 with interest at 10 % from said date; $5,000 on note due Bank of Topeka, Topeka, Kas. Feb. 20, 1891, with interest at 10 % after maturity $1,000 on note due Central National Bank of Topeka, Kansas, Jan. 14, 1891,
225 with 10 % interest after maturity; $1,000 on note due Central National Bank of Topeka, Kansas. Dec. 15, 1890, with interest at 10 % from said date; $1,000 on note due A. H. Vance of Topeka, Kansas; $600 on note due A. H. Vance of Topeka, Kansas; $300 on note due A. H. Vance of Topeka, Kansas, which with interest amounts at the present time to $2.300.00; $1,048.54 being the amount due Henry W. King & Co. of Chicago, Ills. as shown by two notes with interest on said amount from April 11th 1890 at 8 % interest; $1,000 balance on note due Nov. 3, 1890, to Tootle, Hosea & Co. of St. Joseph, Mo. with interest at 9 % from April 9, 1890; $2,800 due Dec. 3, 1890 to Tootle, Hosea & Co. of St. Joseph, Mo. with interest at 9 % from April 9th, 1890; $2,800 due Jan. 3 1890 to Tootle, Hosea & Co. of St. Joseph, Mo. with interest at 9 % from April 9 1890. All of the above being promissory notes made by W. F. Wolfe and Lewis H. Wolfe, being the firm of W. F. Wolfe & Son to the Bank of Topeka, State of Kansas, Central National Bank of the City of Topeka, State of Kansas; Henry W. King & Co. of Chicago, State of Illinois, and Tootle Hosea & Co. of St. Joseph, State of Missouri.

All of which notes except those made to him are signed by the said A. H. Vance as security; all of which said notes except those made to A. H. Vance and Henry W. King & Co. are signed by D. A. Harvey as security, and the note of $5,000 to the Bank of Topeka is signed by J. T. Clark as security. And this mortgage is made for the benefit of said banks and persons above named to cover said notes and all and any renewals of same and to secure

the payment of said money and protect said sureties from loss thereof.

Now therefore, in consideration of said indebtedness and to secure the payment of the sum as aforesaid, said parties of the first part do hereby sell, assign, transfer and set over to said parties of the second part the property owned entirely by them and without any
226 incumbrance and described in the following schedule, viz: The entire stock of dry goods, clothing, hats, caps, boots and shoes, notions and gentlemen's furnishing goods of said first parties now contained in the store building occupied by them and situated on the S. W. corner of Harrison avenue and Division Sts. in the city of Guthrie, Oklahoma Territory, and also the entire stock of dry goods, clothing, hats, caps, boots and shoes, notions and gentlemen's furnishing goods of said first party now contained in the store building occupied by them and situated and described as follows: No. 220–222 Main St. Oklahoma city, Oklahoma Territory, it being the true intent and meaning of the parties hereto to include and cover herein all goods, wares and merchandise of whatsoever kind and nature now contained in each of the said store buildings. Also all fixtures and furniture in each of said buildings.

Provided however, that if said interest be paid as above specified this sale and transfer shall be void, otherwise to be in full force and effect.

The possession of the said above-described property is hereby surrendered to the said parties of the second part, and the said parties of the second part shall sell the same at public or private sale, with or without notice, and after satisfying the aforesaid debt and interest thereon, and necessary and reasonable costs, charges and expenses incurred, out of the proceeds of sale, they shall return the surplus to the parties of the first part or their legal representatives and if from any cause said property shall fail to satisfy said debt and interest as aforesaid, the parties of the first part hereby agree to pay the deficiency.

In witness whereof the said parties of the first part hereunto set their hands this 15th day of December, 1890.

W. F. WOLFE & SON.

Witness' signature:
HARPER S. CUNNINGHAM.

This instrument executed in duplicate.
Then follows the certificate and filing marks.

227 By the COURT: Mr. Cotteral, did you find the original?

By Mr. COTTERAL: No, sir; there is a misunderstanding as to that. My recollection is that Mr. Wisby had it last, and he thinks I had it; it was among the papers here.

Testimony of William L. Harvey.

WILLIAM L. HARVEY, being called as a witness for the plaintiff and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. JAMES:

Q. What is your name?
A. William L. Harvey.
Q. Where do you reside?
A. At Chandler, Oklahoma.
Q. How long have you resided there?
A. Since the opening of the Sac & Fox country, which was in 1891—fall of 1891.
Q. Where did you live immediately before you came to Chandler?
A. At Oklahoma city.
Q. How long did you live at Oklahoma city?
A. I was there a good part of the time from the opening of Oklahoma proper up to the time that I left there. My family was not there all the time, but I was. I was there at the original opening of Oklahoma.
Q. Now, you have heard Mr. A. H. Vance and Mr. Louis H. Wolfe speak about a chattel mortgage on stocks of goods in Guthrie here and Oklahoma city, have you not, during the course of this trial?
A. I have.
Q. Mr. Harvey, I will get you to state what possession, if any, you took of any property purporting to be covered by the chattel mortgage which was just read before the jury.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

228 A. I took possession of the property at Oklahoma city on the night of the 15th of December, 1890. The next day I came to Guthrie and received from Mr. Cunningham——
Q. Which Mr. Cunningham?
A. Harper S. Cunningham, the attorney for the plaintiff here—the keys to the store building underneath here, where the Wolfe & Son stock had been.

Objected to as incompetent, irrelevant, and immaterial and not being in any way involved in this suit; which objection was by the court overruled; to which defendant excepted.

I got here in Guthrie on that day, the 16th, and came up here in this court-room—court was then in session—and saw Mr. Cunningham.
Q. Now, state which Cunningham.
A. Harper S. Cunningham, the attorney in this case for plaintiff.

He took me to the rear of this room and introduced me to Mr. James, the attorney in this case who represented one of the mortgagees, Tootle, Hosea & Company. He handed the keys over to me, and Mr. James and I went into the office in the rear of this court-room, and Mr. James got out the notice that the goods in the store-room below were taken possession of (interrupted)——

Defendant moves to strike out as incompetent, irrelevant, and immaterial; which motion was by the court sustained; to which plaintiff excepted.

Q. Have you that notice with you?
A. I have.
Q. You may produce it.
A. (Witness produces paper and hands to counsel.)
Q. Is the paper that you now have in your hands the paper that you testified about?
A. That is the notice.

(Paper is marked Exhibit R.)

Q. Who wrote this notice?
229 A. Mr. James, representing Tootle, Hosea & Co.
Q. What did he do with it?
A. Took it below into the store-room, and it was fastened onto one of the doors. I think the curtain was drawn down and it was pinned onto the curtain so as to show the writing on the outside through the glass door.
Q. I understand this notice you mention is in the handwriting of the plaintiff's attorney, Mr. James?
A. Mr. James; yes, sir.

By Mr. HORNOR: We will object to all this at this time for the reason that it is incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

Plaintiff now offers in evidence the paper identified by the witness and marked Exhibit R.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

Counsel reads notice in the following words and figures:

"This stock of goods, wares, and merchandise and the fixtures and furniture in this store building are in possession of the undersigned mortgagees, who will proceed to sell the same according to law.

A. H. VANCE.
D. A. HARVEY.
J. T. CLARK.
THE BANK OF TOPEKA, TOPEKA, KANSAS.
THE CENTRAL NATIONAL BANK OF TOPEKA, KANS.
HENRY W. KING & CO.
TOOTLE, HOSEA & CO."

Q. You may state now what you did in connection with the stock of goods at Oklahoma city, mentioned in the said chattel mortgage, on and after the night of December 15, 1890.

A. I employed Ed. Scott, at Oklahoma city, to help me in taking an inventory of those goods, and left him there when I came up here.

Q. Is the Mr. Scott you have mentioned the gentleman sitting here (pointing)?

A. Yes, sir; that is the gentleman sitting there. I came up here then.

230 Q. I don't think we care what was done thereafter in connection with this stock here, but we want to know first what was done with the stock at Oklahoma city. In that connection who put you in possession down there? Who put you in possession of the stock at Oklahoma city?

A. Mr. Vance.

Q. Mr. A. H. Vance, one of the mortgagees?

A. Yes, sir; one of the mortgagees.

Q. Well, state whether any person was down there at Oklahoma city other than Mr. Vance representing the mortgagees at that time?

A. No; I think not.

Q. State whether any attorneys for the mortgagees were there.

Objected to as leading. Overruled. Exception.

Q. That is, if you know of your own knowledge.

A. I think that you, Mr. James, was there about that time. I don't know the exact date.

Q. Well, now, proceed, Mr. Harvey, and state what you did in connection with the possession of the stock of goods. What became of the stock of goods?

A. With the help of Ed. Scott, Charles Figg, and Mont Palmer I took an inventory of all of the goods in that Oklahoma City store.

Q. Do you know where that inventory is?

A. I think it is here.

Q. I will get you to look at the book which I now hand you and state what it is.

A. That is the inventory of the stock of goods in the Oklahoma City store.

Q. Well, now, state upon what basis you made such inventory.

A. My instructions were to take a fair inventory of everything.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which plaintiff excepted.

Q. State what you did.

231 A. The inventory was taken—the cost price marked on the goods was put down here on this inventory. Where there were pieces of goods—dress goods—anything like that—they were measured. If the goods were shelf-worn or damaged they were

put lower than the cost price put on the goods—marked on the goods.

Q. I will get you to state who, if any, of the persons that aided you in taking that inventory had been immediately before that connected with the same.

A. Yes, sir; Mr. Ed. Scott and Mr. Mont Palmer. Ed. Scott has been connected with the store and Mont Palmer had some time before that, but not just previous to that.

Q. Well, now, what proportion of the goods in the store when you took possession of the store did you inventory?

A. All of the goods.

Q. And what proportion of the goods so inventoried by you did you schedule in the book which you now hold?

A. All of them.

Q. Well, now, state what allowance, if any, was made for freight in the inventory as made by you and entered in said book.

A. I think that there was an allowance made at the last, at the footings, if my recollection is right. After writing and adding an allowance was made at the footings, after the footings were made.

Q. I will get you to state what amount, if any, of the stock of goods which you first took possession of there was taken from you by writs of replevin and not by the defendant in this case—that is, if you have any recollection or memoranda.

A. My recollection of the Oklahoma City stock is that it was between five and six hundred dollars; about that sum.

Q. Was there any record made of it in the book there?

A. Yes, sir; there was a memoranda made somewhere—yes, sir; here is the memoranda here in this book.

232 Q. What was the amount of the goods as they were inventoried by you, Mr. Scott, Mr. Figg, and Mr. Palmer—of the stock of goods at Oklahoma city?

Objected to as incompetent, irrelevant, and immaterial, no showing who placed the cost-mark on the goods, and no showing that they were worth that, and certainly incompetent to show value in that way; which objection was by the court overruled; to which defendant excepted.

Q. I will get you to state in connection with that whether or not the cost-mark was not used in making the inventory in connection with making the inventory which you did make there.

A. It was in nearly every instance. Sometimes when the cost-mark was not on the goods we found the cost from the original bills; from the letters.

Q. Now, state the amount of all the goods you took possession of on December 15, 1890.

Objected to as incompetent, irrelevant, and immaterial as to what the original bills shall show these things to be and not the best evidence; which objection was by the court overruled; to which the defendant excepted.

A. The full amount of the goods which I inventoried there amounted to $10,473.70.

Q. Now, how much was taken from you under writs of replevin?

A. The amount which I have just given was the amount left after the goods taken by the writ of replevin were taken and not the total of the inventory originally. I had not seen this inventory for a number of years and was not very familiar with it. The full amount was $11,055.21.

Q. $11,055.21?

A. Yes, sir.

Q. Now, how much was taken from you by the writs of replevin?

233 A. $581.51; that is included in the $11,055.21.

Q. Now, how much of that stock of goods did the defendant take from your possession—from the possession of the mortgagees—at that time?

Objected to because the witness is not competent to testify; which objection was by the court overruled; to which defendant excepted.

A. $10,473.70. I will state here that $952.15 is for carriage, ten per cent. of what the goods were inventoried at; that was added, as I said before, after the footing was made.

Q. How much was it that was allowed for freight?

A. $952.15.

Q. Now, state to the jury, Mr. Harvey, when the defendant took these goods from your possession at that time.

Objected to as incompetent and not being the best evidence; which objection was by the court overruled; to which defendant excepted.

A. My recollection is that it was on the 25th day of December, 1890.

By the COURT: How much did you say De Ford, the defendant in this case, took?

A. This, Judge, includes the carriage and insurance, $10,473.70.

Q. And the $952.15 is for carriage and insurance?

A. Yes, sir.

Q. Now, Mr. Harvey, just state who had the keys to the building down there.

A. Mr. Vance delivered them over to me.

Q. You received them from Mr. A. H. Vance?

A. Yes, sir; Mr. A. H. Vance.

Q. Who had control of them after they were delivered to you up to the time the sheriff took the goods away?

A. I had control of them.

Q. State what he did in connection with taking them away from there; ousting you from possession.

234 A. The sheriff made demand on me for the keys. I refused to deliver them to him, and he broke into the door and took possession and ordered me out—put me out of the building.

Q. Who, if anybody else, was in the store with you at the time that he put you out?

A. Mr. Scott, Ed. Scott, Charles Fiff, and I think Mont Palmer.

Q. What was done with them at the time you were put out?

A. They were put out also.

Q. What possession, if any, did you have of the stock of goods after that?

A. No possession whatever.

Q. Who had the possession and continued to have the possession and control of the goods thereafter?

A. The sheriff, I presume.

Q. You mean the defendant?

A. Yes, sir; C. H. De Ford.

Cross-examination by Mr. OVERSTREET:

Q. How did you ascertain the cost-mark on these goods from which to make the inventory?

A. From the cost-mark that was marked on the goods.

Q. What was it?

A. I have forgotten the key at this time. I knew at the time what it was, but it has been a number of years ago, and I have forgotten just what it was—what the key to the mark was.

Q. Where did you get the key to it?

A. I got it from Mr. Ed. Scott.

Q. Now, is it not a fact that the carriage was added in to the cost that was marked on the goods?

A. Not until the footings was made.

Q. And then the carriage was added in—ten per cent. of the footings. Was not each article marked; didn't each article that was marked include the cost of carriage?

235 A. I didn't so understand it.

Q. You did not understand it that way?

A. No, sir.

Q. You thought it did not, and then you added ten per cent. onto the total footings?

A. Yes, sir.

Q. If, as a matter of fact, the cost-mark on each of the articles included carriage, then the carriage had been added in double, according to your inventory?

A. Yes, sir.

Q. Now, this was an entirely new stock of goods, was it, Mr. Harvey?

A. Some of them were new, some were old.

Q. The greater proportion of them were old, were they not?

A. No; I think not.

Q. You do not remember distinctly on that, do you?

A. There were a great many old goods there; I don't remember exactly what proportion were new goods and which were old.

Q. Do you know what the defendant did with those goods?

A. I do not.

Q. Do you know that he sold them there—were you not present at the sale?

Objected to as incompetent and not cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Have you those original bills that you examined when you made this inventory?

A. I have not.

Q. Do you know where they are?

A. I do not.

Q. What did you do with them?

A. They were in the possession of Ed. Scott there in the store; I don't know what became of them.

236 Q. Did you find the original bill for every article that you inventoried?

A. I did not.

Q. You went more by the cost-mark as you found it?

A. Yes, sir; if the cost-mark was on the goods we went by that. Frequently there was no cost-mark on the goods.

Q. Then you would hunt up the original bills for the goods?

A. Yes, sir.

Q. Did you always succeed in finding them?

A. No, sir; not always.

Q. To what extent did you find the original bills for these goods?

A. Why, we didn't have to hunt for the original bills but very little in the Oklahoma City stock.

Q. Then there were very few original bills that you discovered there?

A. Oh, several; yes, sir; in the Oklahoma City stock.

Q. What was your recollection as to the date of those original bills in relation to the time that you examined them?

A. The date; I don't remember the date.

Q. In making this inventory, it is solely made up, then, as I understand you, Mr. Harvey, by the cost-mark which you assumed to be the true cost of the goods with carriage added, is it?

A. Not solely made up.

Q. Explain the difference.

A. As I said, some of the values were put on from the bills.

Q. But those were very few, you say?

A. Well, in the Oklahoma City stock I don't think they were; I think that there were but very few bills used; I think that the goods there were generally marked. That is my recollection of it.

Q. With that exception, then, of a few bills, that the goods were inventoried by, you simply assumed that those cost-marks that you found upon the bills represented the value of the goods? That was the way you made your inventory?

237 A. I took it for granted that the cost-mark was what they cost.

Q. Are you related to the Wolfes?

A. Yes, sir.

Q. What relation are you?

A. I am a brother-in-law to W. F. Wolfe.
Q. What relation to D. A. Harvey?
A. Brother.
Q. Did you assist in inventorying the stock of goods here at Guthrie?
A. Yes, sir.
Q. Was the goods marked the same on both these stocks of goods?
A. I think it was the same; I am not positive, but my recollection is that it was the same, though I am not positive on that point.

The defendant now moves to strike out all the testimony of the witness W. L. Harvey, for the reason that it is incompetent, irrelevant, and immaterial and does not tend to prove or establish the value of these goods; that the witness is incompetent to testify in this case, and not the best evidence; which objection was by the court overruled; to which defendant excepted. The defendant moves to strike out all of that part of the witness's testimony as to the values of the goods as disclosed by the cost-mark testified to by him, and also as to the value of the goods as disclosed by the original bills testified to by him, as being incompetent and not the best evidence and not tending to establish the value; which motion was by the court overruled; to which defendant excepted.

Testimony of Edgar B. Scott.

EDGAR B. SCOTT, being called as a witness for plaintiff and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

238 Direct examination by Mr. JAMES:

Q. What is your full name?
A. Edgar B. Scott.
Q. Where do you live?
A. Kingfisher at present.
Q. How long have you lived there?
A. One year.
Q. Where did you live before that?
A. McAllister, I. T.
Q. And where before that?
A. Oklahoma city.
Q. Where were you living in December of 1890?
A. Oklahoma city.
Q. What was your business, if any, there?
A. Clerking for the firm of William F. Wolfe & Son.
Q. How long had you been clerking for them?
A. I think from September, I think, to the wind-up.
Q. State what knowledge, if any, you had of the cost-mark on the goods, if there was any cost-mark, in connection with their business.
A. When I began clerking for Wolfe & Son the cost-mark was

given to me, and any goods that we got in I used the cost-mark and put the cost-mark on the goods from the bill.

Q. Now, in getting in goods similar to goods which were already in there, how did the cost-mark which you put on the new goods compare with the cost-mark which you already found on the similar goods when you went in there?

A. The same.

Q. How long had you been in the mercantile business prior to your going in the store there?

A. I think about two years.

Q. State what knowledge, if any, you had of prices and the value of goods similar to the goods that was in the store there at Oklahoma city of W. F. Wolfe & Son.

239 A. Well, I thought I had a pretty good idea of the value of the goods; I had been clerking for two years.

Q. I will get you to state what participation, if any, you had in taking an inventory of the stock of goods there under the direction of W. L. Harvey, who has just testified in this case.

A. I was selected by Mr. Harvey as one of the three to take the inventory.

Q. Who else aided in taking that inventory?

A. Mont Palmer and Charles Figg.

Q. In whose handwriting is Exhibit S, and what is Exhibit S?

A. it is Mr. Figg's handwriting, I think.

Q. What is the book that is marked Exhibit S?

A. This is the inventory of the stock of goods at Oklahoma city.

Q. What stock?

A. The stock of William F. Wolfe & Son.

Q. Is that the inventory that Mr. Harvey aided you in taking?

A. Yes, sir.

Q. You may state upon what basis or what guided you in the inventory.

A. The cost-mark, some few bills, and our own idea of what the goods were worth.

Q. State what you mean by your idea of what the goods were worth.

A. I believe in a few instances where goods were shelf-worn and had been on hand some time we put it down to what we thought it would bring—what it was actually worth —not what the cost-mark was, but what it was worth.

Q. Then all the goods which were inventoried there were not inventoried at the original cost price?

A. No, sir.

Q. State what allowances or estimation, if any, were made with regard to freight or transportation of the goods.

240 A. The old gentleman, Mr. Wolfe, always insisted on our making the goods (interrupted)——

Objected to as incompetent, irrelevant, and immaterial. Sustained. Exception.

Q. It is not proper to state what Mr. Wolfe said,

A. It was the real value of the goods, the actual cost.
Q. You mean the original cost?
A. Yes, sir; no freight added.
Q. In the cost mark?
A. Yes, sir.
Q. What allowance, if any, was made in the inventory as footed up there?
A. Ten per cent., I believe.
Q. How long did you continue in possession there under Mr. Harvey on behalf of the mortgagees, and how did you happen to go out of the possession, if you did go out?
A. Why, I continued until the time Mr. De Ford took possession of the stock. I think that we were all put out.
Q. By whom?
A. By Mr. De Ford.
Q. How did he get possession—how did he get into the building?
A. He broke in the door.
Q. Broke in the door and then put you all out?
A. Yes, sir.
Q. You may state now, if you can, from that inventory there that you say you helped make, what was the value of the stock of goods on hand by your inventory taken by you at that time in connection with Mr. Harvey.

Objected to as incompetent and witness not shown competent to testify; which objection was by the court overruled; to which defendant excepted.

A. It was something like eleven thousand dollars.
Q. Well, what was your opinion at the time and what is your opinion now as to what was the value of the stock of goods
241 at the time the sheriff dispossessed you?

Objected to as incompetent, not the best evidence, and the witness not shown to be competent, and the market value ought to be the value of the goods and not his opinion as to their real value; which objection was by the court overruled; to which defendant excepted.

A. We tried to take a correct estimate of the goods.
Q. Then what was the value of the goods that you took at that time?

Objected to as incompetent and the witness incompetent. Objection overruled. Exception.

A. It was something over ten thousand dollars, the ten per cent. being added, making eleven thousand dollars and something; I have forgotten what.
Q. State what value, wholesale value, retail value, market value, or what value do you mean now when you say the value was $11,000?
A. I mean what merchants paid for their goods at that time.
Q. And in that do you include freight or not?
A. The $11,000 includes freight; yes, sir.

Cross-examination by Mr. OVERSTREET:

Q. When Mr. De Ford took possession of the stock you say he put you and Mr. Harvey and the other clerk out. How did he put you out?

A. I don't remember.

Q. He didn't use any force, did he?

A. No, sir; I don't hardly think he did.

Q. Just simply told you that he was the sheriff and had a writ to take possession of those goods and did it, and you went away; is that not the fact?

A. I think that is right.

Q. Now, you didn't see Mr. De Ford break the door to get in there, did you?

A. Yes, sir.

Q. Which door was it?

242 A. I believe that it was the door from the back.

Q. It was not very hard to break, was it?

A. No, sir.

Q. Was the door locked?

A. Yes, sir.

Q. The value which you place upon these goods, including freight and carriage, at something about ten thousand dollars, you mean as shown by that inventory, in the manner in which you took it, do you not, Mr. Scott?

A. Yes, sir.

Q. You did not mean that in your opinion that that was the true market value of those goods in the condition they were in at that time, do you?

A. I think that in most every case where goods were damaged that we cut them down to what we thought they were worth.

Q. That does not quite answer the question.

A. Therefore I think that we took a correct inventory of the goods.

Q. You think that you took a correct inventory of the goods as shown by the cost mark on the goods and the carriage added, and taking into consideration those few instances where you were not controlled by the cost-mark or bill?

A. Yes, sir.

Q. What kind of a stock of goods was that—a new stock or an old stock?

A. Well, it was a mixed stock.

Q. What all did it contain? Just enumerate the various articles.

A. Dry goods, clothing, boots and shoes, hats and caps, notions.

Q. Gents' furnishing goods?

A. Yes, sir; gents' furnishing goods.

Q. A little of everything in that stock?

A. A little of everything.

Q. And it had come down there into that store from various quarters of the United States, had it not?

A. I don't know how it got there; it was there when I
243 went to work in September; some of them.

Q. As to the cost-mark on the goods that were in the store when you went there, you don't know anything about the value of those goods as compared with the cost-mark that was placed on them, do you?

A. Nothing.

Q. It was only the goods that you individually placed the cost-mark on by the bills that came afterwards?

A. Yes, sir; that was all that I could say.

Q. During the two years that you were there where did these goods come from to that house, mostly?

By the COURT: I think the witness did not testify that he was in the store two years.

Q. How long had you been in the store, Mr. Scott?

A. From September to December; a very short time.

Q. During that time where did the most of the goods that came into that stock come from?

A. Guthrie.

Q. Most of them shipped from Guthrie?

A. Yes, sir.

Q. Did you assist in making a second inventory of this stock of goods, an inventory for the sheriff under his writs after he took them?

A. Yes, sir.

Q. In making that inventory what basis of valuation did you go upon, you and the appraisers that appraised the stock?

Objected to as not proper cross-examination; which objection was by the court overruled; to which plaintiff excepted.

A. I think that it was the actual value of the goods—what they could be put up and sold for.

Q. How long was that valuation placed upon the stock after this one that you assisted Mr. Harvey in making?

A. I don't remember.

244 Q. Can you approximate it?

A. It was in December—I believe it was the following month, but I have forgotten.

Q. About what was the total valuation?

Objected to as not the best evidence; which objection was by the court overruled; to which plaintiff excepted.

A. I think it was about seven thousand dollars.

Q. And in placing that valuation upon the stock you went over the stock and reinventoried it, did you not?

A. Yes, sir.

Q. And estimated that that was about what the goods could be sold out for if the stock was opened up, and they were sold out in the usual way of doing business there, was it?

A. No, sir; I think it was—the valuation was supposed to be

what the goods could be bought for, new goods in their place at that time.

Q. What new goods could be bought for in their place?

A. Yes, sir.

Q. Now, did you remain with this stock of goods and assist in selling them or have anything further to do with them after these two valuations?

A. Yes, sir; I remained with them until they were opened up and sold out at retail; I helped sell them at retail.

Q. Now, what did the sheriff do with them, if you know, immediately after this?

Objected to as immaterial and not proper cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. After this appraisement and about the 4th of February following, that would be shortly after this second valuation, were you present when the sheriff sold all of these goods that you are speaking about?

A. I was.

245 Objected to as not proper cross-examination.

By the COURT: He has answered the question.

Q. Now, what did they sell for at that sheriff's sale?

Objected to as not proper cross-examination; which objection was by the court sustained. Exception.

Q. At the time the sheriff sold these goods when you say you were present, what number of persons were they there seeking to buy the goods, and examined them with a view of purchasing them?

Objected to as not proper cross-examination. Sustained. Exception.

Q. You remained with this stock of goods then until they were afterwards sold out in the due course of mercantile business?

Objected to as a repetition and not proper cross-examination and immaterial; which objection was by the court overruled; to which plaintiff excepted.

A. I did.

Q. And about what did they net; about what was the net sale of those goods when they were all sold out?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. Did you remain with this stock of goods after the inventory, which you assisted Mr. Harvey to make, was made, and up to the time that the sheriff took possession?

A. Yes, sir.

Q. During that time was there any of the goods, as inventoried

by you and Mr. Harvey, sold and disposed of or taken out of the store—that is, prior to the time the sheriff took possession?

A. I don't remember. I know that there were some goods taken out.

Q. About what amount in value?

A. I expect five or six hundred dollars' worth.

Q. That was the goods that were taken under the writ of replevin?

A. Yes, sir.

246 Q. Were there any goods taken out besides those goods? Did Mr. Harvey or did Mr. Wolfe or any of these plaintiffs in this action, or any one besides the officer who had the replevin writ, take any of the goods out?

A. No, sir.

Q. How constantly were you there, Mr. Scott?

A. All the time.

Q. At the time that the sheriff or the defendant, Mr. De Ford, came into possession of these goods what was their true market value in the city of Oklahoma city at that date, taking into consideration the character of the stock and everything connected with it?

A. According to our inventory (interrupted)——

Q. I don't mean according to your inventory, Mr. Scott, but I mean in your own opinion, your own experience and knowledge of these goods, what was their true market value there at Oklahoma city at that date?

A. They were worth that upon the market $10,000.

Q. They did not sell for anything like $10,000 on the market, did they?

Objected to as not proper cross-examination and immaterial; which objection was by the court sustained. Exception.

Q. How do you estimate that market value? By taking the inventory that you made—taking the cost-mark and adding carriage?

A. Yes, sir.

Q. Well, when you made the appraisement at $7,000 you estimate that at a different valuation, didn't you?

A. Yes, sir.

Q. And testified, didn't you, that you made that estimate because you thought that was about what it would cost to put new goods in their place?

A. Yes, sir.

Q. Well, now, do you mean to be understood that if you could have put new goods of the quantity of that stock in their place for $7,000 that the market value of these goods was $10,000?

247 A. Of course, when we took the last inventory everything was cut down to just what it was actually worth; some of those goods were a year or so old and goods had depreciated, and it was cut down considerably. When we made the first inventory goods where marked to cost $1.00 that was what we put it at unless it was damaged or shelf-worn.

Q. Was not there a number of goods there which were several years old?

A. I don't know.

Q. Was there not a large quantity of old stock of boots and shoes and clothing and gents' furnishing goods and ladies' wraps that were out of style and old and shelf-worn?

A. There were some.

Q. How long had you resided in Oklahoma city at the time the sheriff came into possession of this stock of goods?

A. From June, 1889.

Q. And had been in the mercantile business for about two years at that time?

A. I had been clerking in Oklahoma city up to the time I went to work for Mr. Wolfe.

Q. And were you acquainted at that time with the mercantile business there and the market value in Oklahoma city of general merchandise?

A. I had some knowledge.

Q. Now, Mr. Scott, taking into consideration the condition of the market at Oklahoma city at the date the sheriff went into possession, what would have been the cash value that could be obtained for these goods had the owner of them sought to sell them and find a purchaser who desired to buy them?

A. I don't believe I can answer you; I don't know.

Redirect examination by Mr. JAMES:

Q. When you took the second inventory there you were instructed, were you not, by persons taking that inventory to inventory it upon a basis of what it would sell for at sheriff's sale?

A. Yes, sir.

248 Q. What you thought it would sell for by the sheriff?

Objected to as leading and incompetent and asking the witness for a conclusion, and hearsay; which objection was by the court overruled. Exception.

A. Yes, sir.

Q. What relation, if any, are you to the defendant, Mr. De Ford?

A. Son-in-law.

Testimony of W. L. Harvey.

W. L. HARVEY, being recalled for further cross-examination, testified as follows:

Cross-examination by Mr. HORNOR:

Q. When did you first come into possession of the Oklahoma City stock of goods?

A. On the 15th of December, 1890.

Q. How long did you remain personally in possession of the goods?

A. Why, I retained possession until they were taken away by Mr. De Ford.

Q. Did you remain with the stock in person?

A. Not all the time.

Q. How long did you personally remain with the stock after you first went into possession until you quit it?

A. I was down there nearly every day; part of the time I was here with this stock and part of the time below with that stock.

Q. Were you not here in Guthrie with this stock of goods constantly every day until that stock was taken out of your possession by the officer?

A. No, sir.

Q. You were here on the 16th of December, were you not?

A. Yes, sir, and at Oklahoma city on the 17th.

Q. Were you not here on the 17th, too, part of the day?

A. I left here on the midnight train on the 16th and went down to Oklahoma city, staid all night in the store, and returned
249 the next day to Guthrie.

Q. How long did you stay here?

A. I have a little memoranda of my movements about that time.

Q. Is that the memoranda that you made at the time, Mr. Harvey?

A. Yes, sir.

Q. Why did you make the memoranda at that time?

A. Why, just to inform Mr. Vance of what I was doing. I went to Guthrie—this is December 16—went to Guthrie on 3.43 a. m. train, and on same day posted notice on doors; returned to Oklahoma city on the midnight train. December 17 went to Guthrie on 3.43 train and commenced taking inventory. I remained in Guthrie on the 17th, the 18th, and the 19th, and returned to Oklahoma city on the 20th; remained there, and returned to Guthrie on the 3.43 a. m. train on the 22nd, and on the 23rd I was turned out of the store here and returned to Oklahoma city on that night train and remained in Oklahoma city up to the 25th.

Q. At what date did you commence taking the inventory at Oklahoma city?

A. The 22nd.

Q. That was after you had left Guthrie—after you had taken the inventory here?

A. I think Mr. Vance commenced taking the inventory there on the 22nd; he commenced it on the 22d.

Q. After you first went into possession of the Oklahoma City stock who did you leave in charge of it during your absence?

A. Ed. Scott, the witness here.

Q. Any one else?

A. No one else except the attorney there, Mr. Guthrie.

Q. Ledru Guthrie?

A. Yes, sir.

Q. Is that all that had access to the building?

A. That was all.

Q. Didn't Louis Wolfe and W. F. Wolfe have access to the building?

A. They did not.

250 Q. How many keys was there to that building?

A. I think there was double doors in front. I think there was two keys to one door and one to the other; three keys to the two front door—that is, one key to one door and two keys to another—and the back doors—there were two back doors—two back doors and a key to each.

Q. You carried all those keys but the one that Scott carried, did you?

A. I carried the keys. When I went away I carried a key to the front door—one of the front doors—one of the keys. The other keys were left there with Mr. Scott.

Q. Left in the store building?

A. Yes, sir.

Q. Was there any goods taken out of this stock after you went into possession on the 15th up to the time that the sheriff took possession on the 25th, except those taken on a writ of replevin that you testified to?

A. No, sir; not to my knowledge.

Q. At the time that you took possession of these stocks, you did it under the direction of Mr. Vance?

A. I did.

Q. In what capacity were you acting and for whom?

A. For Mr. Vance and Mr. D. A. Harvey and the parties that Mr. Vance was looking after their interest. Mr. Vance first showed me this chattel mortgage, read it to me, had me read it, and explained the situation and asked me to take charge of the goods while he was away. He had to leave.

Q. Take charge of it for the mortgagees and those interested in that mortgage?

A. For the mortgagees. My brother was not there at that time, D. A. Harvey, and as I was attending to his business while he was away, why that was one inducement for me to take charge of the goods, looking after his interest, he being one of the mortgagees.

251 Q. Where were you when Mr. Vance first spoke to you about the mortgage and showed it to you?

A. In the store.

Q. Which store?

A. The Oklahoma City store.

Q. What knowledge had you of the mortgage before that time?

A. I had no knowledge whatever.

Q. What knowledge had you that the mortgage was about to be given?

A. I had no knowledge whatever.

Q. At the time you commenced the inventory of the Oklahoma City stock of goods what knowledge, if any, had you that the defendant, C. H. De Ford, sheriff, held writs of attachment to be levied upon the stock?

Objected to as immaterial and not cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. When the sheriff took possession of the stock of goods at Oklahoma city did you notify those whom you represented of that fact; and, if so, when?

Objected to as immaterial and not cross examination; which objection was by the court sustained; to which defendant excepted.

Q. Is it not a fact, Mr. Harvey, that at the time you made this inventory, concerning which you have testified as to the Oklahoma City stock of goods, you did it for the purpose of claiming the goods to be of the value as stated in the inventory, under the information and knowledge that the goods were to be levied upon by writs of attachment held by C. H. De Ford, the defendant, in actions then about to be brought or already brought in this court?

Objected to as immaterial and not proper cross-examination.

A. No, sir.

By the COURT: He has answered it, and I will let the answer stand.

To which plaintiff excepted.

Q. Is that all your answer?

252 A. The inventory was taken under the direction of the mortgagees and Mr. Vance and Mr. James, who represented Tootle, Hosea & Co., for the purpose of, as they said, to show just what the stock of goods was, how much there was in it, in each store preparatory to a sale.

Q. At the time that you commenced taking that inventory or during the time that you were taking it didn't you have knowledge that the defendant sheriff held writs of attachment that he was going to levy upon that stock of goods?

Objected to as immaterial and not proper cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Mr. Harvey, at the time the sheriff took possession of this stock of goods at Oklahoma city, did you not at once notify all those whom you were representing there under the mortgage of that fact?

Objected to as immaterial and not proper cross-examination; which objection was by the court sustained; to which the defendant excepted.

Q. Were you not directed, Mr. Harvey, in taking these inventories to make as high an appraisement as possible, for the reason that it was contemplated that suits would be brought or had already been brought by which the goods would be seized, and this valuation was desired in order, if possible, to recover and as a basis for that recovery of the value?

A. No, sir.

Q. You never had any information of that kind?

A. No, sir.

Q. At the time that you were taking the inventory of the Guthrie stock of goods is it not a fact that you had the doors bolted to keep the officers out and had two or three encounters with them in their demand and demands upon you to surrender the goods to them?

Objected to as incompetent and not cross-examination; which objection was by the court sustained; to which defendant excepted.

253 Q. Is it not a fact that during the time that you were in possession of the stock of goods at Oklahoma city and at the time the inventory was being taken of the stock and before it was completed, if not before it was commenced, that attempts had been made by the officer to levy upon that stock of goods?

A. I think not.

Q. Hadn't the officer been there and notified you that he held writs and demanded possession of the goods?

Objected to as immaterial and incompetent and not proper cross-examination and hearsay; which objection was by the court sustained; to which defendant excepted.

Redirect examination by Mr. JAMES:

Q. State what notice, if any, was put on the windows or doors there of that stock being in the possession of the mortgagees at Oklahoma city.

A. They were written notices similar to this one that was read, posted upon the doors at Oklahoma city, at the store.

Q. When?

Defendant objects to this question and moves to strike out the last answer of the witness as incompetent and not the best evidence and irrelevant and immaterial, which is by the court overruled as not taken in time.

A. No answer.

Q. What became of the notice that was on the door, if you know?

A. I don't know. I think it was left there when I was turned out of the store.

Q. Did you go back there afterwards to see whether it continued there or not—whether it was removed?

Objected to as leading and incompetent; which objection was by the court overruled; to which defendant excepted.

A. No, sir; I don't remember going back there to see about that notice.

Q. When was it placed there; when was that notice placed there?

254 A. I think it was the night of the 15th—that night.

Q. The 15th of what?

A. Of December, 1890.

Recross-examination by Mr. OVERSTREET:

Q. I want to ask a question I omitted in the cross-examination. Is it not a fact, Mr. Harvey, that during the time that you were making this inventory, from which you testified as to the value of these goods, that there was an officer in possession, making an inventory also, and that it was by his sufferance that you were permitted to make this inventory at Oklahoma city?

A. No, sir.

Q. What time did Ransom Payne have possession of that stock of goods down there?

Objected to as assuming a fact not proven and improper cross-examination and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. Is it not a fact that while you were taking your inventory of the stock of goods here in Guthrie that there was an officer in possession, and it was by his sufferance that you were permitted to make your inventory?

Objected to as calling for a conclusion and immaterial and not proper cross examination; which objection was by the court sustained; to which defendant excepted.

Q. Now, this $600 worth of goods, or that neighborhood, in there that you say were taken out of there, that you deduct from the inventory; when were they taken out and who took them?

A. They were taken out by Ransom Payne on a writ of replevin that was served on me. The exact time I don't remember.

Q. Was it before or after the 22nd of December, 1890?

A. Why, I don't remember now

Q. During the time that he was taking those goods you
255 were making this inventory, were you not?

A. Yes, sir.

Q. You made it by sufferance of the officer in charge?

Objected to as calling for a conclusion of the witness and incompetent; which objection was by the court sustained; to which defendant excepted.

Q. Then you did have knowledge at the time you were taking this inventory that the goods were about to be and part of them were being levied upon?

Objected to as immaterial and incompetent and not proper cross-examination; which objection was by the court sustained; to which defendant excepted.

By Mr. OVERSTREET: I do not understand the theory of these gentlemen or the theory of the court as to why we cannot assail this inventory.

By the COURT: I think you are assuming a fact which does not appear in the evidence at all.

By Mr. OVERSTREET: We want to know what the facts are about this inventory.

By the COURT: I don't think your question was asked, Mr. Overstreet, for the purpose of assailing the inventory. I think that question is asked for the purpose of getting something into the record, which is incorporated in the defense, which the court has held is not a proper defense, and I don't believe, Mr. Overstreet, I care to argue it. If you have any further questions, ask them.

Counsel objects to any statement of the court as to the motives or as to the reason or purpose of asking for this testimony, and asks leave to state to the court, after the jury are discharged, his purpose in going into this line of testimony, in order that the court may thoroughly understand him and in justice to himself, in view of the court's remark.

256 By the COURT: I think you have had every opportunity on earth to show whether or not that inventory was taken with all of the surroundings of a fair inventory or otherwise; that you have had ample opportunity to show whether or not the knowledge of these parties with reference to the valuation placed upon the goods is accurate; that it is wholly immaterial whether it is taken in view of an impending danger of attachment, or whether it is taken by sufferance of an officer, or how it was taken. The fact to be determined and the only question to be determined is whether or not the inventory is a correct inventory, and beyond that I don't think it is competent to go.

Counsel for defendant excepts to the remarks of the court in the presence of the jury.

Q. Where were you residing during the month of November and the earlier part of December, 1890?

A. Part of the time at Oklahoma city and part of the time at Minneapolis, Kansas. My family was at Minneapolis until in December, 1890, and I was at Oklahoma city most of the time.

Q. What time in December, 1890, did you get to Oklahoma city?

A. Why, I was there, I guess, nearly all the month; all except, probably, a week or two during the month of December.

Q. What time in the month did you get to Oklahoma city in December?

A. That is, the last time?

Q. Yes, sir; the first time that you came to Oklahoma city, in December, 1890; what date was it?

A. Why, I don't remember. I was back and forth from Oklahoma city, up to my old home in Kansas, every few weeks.

Q. Now, you say you took charge of the stock of goods in Oklahoma city on the night of the 15th of December. How long had you been in Oklahoma city at that time?

A. I came to Oklahoma city that day with my family.

Q. From where?

A. From Minneapolis, Kansas.

257 Q. What business were you engaged in at Oklahoma city at that time, prior to taking charge of the stock?

A. Why, I was dealing in lots, doing a little law business there before the town-site board.

Q. What time in the day of December 15th did you reach Oklahoma city?

A. In the night.

Q. What hour?

A. I don't remember what time it was. It was very late; probably nearly midnight.

Q. Nearly midnight on the night train?

A. Yes, sir; on the night train.

Q. Who was with you—that is, in connection with this suit, if any one?

A. No one.

Q. Mr. Vance was not with you?

A. No, sir.

Q. At that time you had not seen Mr. Vance?

A. No, sir; no; I hadn't seen Mr. Vance, I guess, for probably fifteen months before that.

Q. Then you came up here to Guthrie on the early morning train next morning?

A. It was either on the early morning train or the afternoon train; I have forgotten which. It was the next day, the 16th, but I have forgotten whether it was on that early morning train or on the noon train. I think at that time the train passed Oklahoma city, coming north, about noon.

Q. You have a memoranda there in your pocket, have you not, which you testified to?

A. Yes, sir.

Q. Look at that and see what time it was.

A. Went to Guthrie on the 3.45 train, December 16th.

Q. That was the morning after the night that you had
258 arrived at Oklahoma city?

A. Yes, sir.

Q. How long previous to the night of the 15th or the morning of the 16th had you met Mr. Vance?

A. I don't think I had met Mr. Vance; seen Mr. Vance for probably fifteen months before that, I don't think. I had seen him before in March, 1889.

Q. Did you see Mr. Vance in Oklahoma city on the night of the 15th?

A. Yes, sir.

Q. Where did you first meet him there?

A. I think he was at the train.

Q. Did he know that you were coming in on the train?

A. I don't know.

Q. You don't know whether he did or not?

A. No, sir.

Q. Do you know when he had reached Oklahoma city?

A. I do not.

Q. You went with him then immediately to the store where this stock of goods was, did you?

A. Yes, sir; that was my recollection.

Q. That was after midnight on the night of the 15th?

A. I don't know whether it was after midnight of what time it was; it was in the night some time, very close to day.

Q. Then you left there at 3.43 and came to Guthrie and took charge of this stock of goods?

A. Yes, sir; that is what my memoranda says. I was under the impression that I came in the afternoon, but this shows that it was on the morning train.

Q. You wrote that memoranda at the time, didn't you?

A. Yes, sir; about that time, probably that day or the next.

Q. You arrived in Oklahoma city near midnight, you say,
259 but are uncertain as to whether it was before or after midnight?

A. I don't remember the hour the train got there; it was in the night and probably was near midnight.

Q. Did you sleep any that night?

A. Yes, sir.

Q. How long did you remain in bed?

A. Why, I slept in the store that night, in the room right back of the store; that is my recollection; my impression now is that I didn't get up until the next afternoon.

Q. But your memoranda shows that you came in the morning.

A. Yes, sir; 3.43 a. m., but it might have been p. m. I don't know; my memoranda says a. m., but my recollection now is that my intention was to go in the morning, but that I overslept myself and didn't go until afternoon.

Q. Who staid with you that night, Mr. Vance?

A. No; Ed. Scott.

Q. Mr. Vance did not remain with you?

A. No, sir.

Q. Did he return to Guthrie with you?

A. No; I don't remember; I don't think he staid there. Well, he didn't stay there; it seems to me he took that morning train, and that I did not waken until afternoon.

Q. You overslept yourself, you think?

A. Yes, sir; that is my impression now; it has been several years ago.

Q. Did you accompany Vance to the train that morning?

A. I don't think I did; no, sir.

Q. Did you see him before he left?

A. Why, I saw him that night and talked over this matter there in the store a long while.

Q. Had W. F. Wolfe or Louis H. Wolfe any information that you would reach Oklahoma city on that night?

A. I don't know.

260 Q. You don't know whether they had or not?

A. No, sir; I don't know.

Q. You don't know whether any of them were looking for you or not?

A. Why, no; I really don't know whether they were looking for me or not.

Q. But they met you at the train, or Mr. Vance did, and took you immediately and turned this stock of goods over to you?
A. Yes, sir.
By Mr. JAMES: Who had possession when you took possession?
A. Mr. Vance.
Q. He personally turned the goods over to you, did he?
A. Yes, sir.

Charles F. Figg.

CHARLES F. FIGG, being called as a witness for the plaintiff, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. JAMES:

Q. What is your full name?
A. Charles F. Figg.
Q. Where do you reside, Mr. Figg?
A. In Topeka, Kansas.
Q. How long have you lived there?
A. Well, I have lived there about eleven years.
Q. Did you at any time live in Guthrie, Oklahoma?
A. Yes, sir; that was about a year that I was in Guthrie.
Q. What time did you live in Guthrie—what period, I mean?
A. Well, I suppose it was during the year 1890.
Q. Where did Louis H. Wolfe live? He lived here at that time, did he?
A. Yes, sir; he lived here when the firm was here.
Q. Were you in the employment of W. F. Wolfe & Son?
A. Yes, sir.
Q. You may state to the jury, Mr. Figg, how long prior to December 15, 1890, you were in the mercantile business, if at all.
261 A. Well, I had been in the mercantile business about three years.
Q. How long prior to December 15, 1890, had you been in the employment of Mr. W. F. Wolfe & Son, if at all?
A. Just about a year; possibly thirteen or fourteen months—about a year.
Q. What knowledge or familiarity had you with the values of merchandise such as was carried by the firm of W. F. Wolfe & Son at Oklahoma city, Oklahoma?
A. Well, I had sufficient knowledge that I gained first place in the business.
Q. You mean that you were next to the firm?
A. Yes, sir.
Q. Did you give your time for the firm at Oklahoma city or Guthrie?
A. At Guthrie.
Q. What was their main store of the two stores?
A. Well, I supposed the store here was considered the main store.

Q. The larger of the two stocks?

A. Yes, sir.

Q. I will ask you to state whether or not you had anything to do with the invoice that was taken of the stock of goods at Oklahoma city under the direction of Mr. William Harvey, who had testified in this case.

A. Yes, sir; I took the invoice there; I did the clerical work.

Q. I will get you to look at Plaintiffs' Exhibit S and state what that book is.

A. I recognize that to be the invoice that I took of the stock there of W. F. Wolfe & Son.

Q. You have heard Mr. Harvey testify this morning, have you not, and Mr. Scott?

A. Yes, sir.

Q. Now, in whose handwriting is the inventory mentioned in said Exhibit S?

262 A. It is in my handwriting.

Q. All of it?

A. Yes, sir—that is, with the exception of the extensions.

Q. What time were the extensions made with regard to the time of the other part of the inventory?

A. Immediately afterwards.

Q. You may state whether or not you were acquainted with the value of the merchandise—the market value of the merchandise—carried in the store at Oklahoma city, the inventory of which you helped to take?

A. At that time I believe that I was reasonably acquainted with it.

Q. With the market value?

A. Yes, sir; I did a great deal of the marking and I had a great many opportunities for ascertaining the true value of the goods.

Q. Now, you may state upon what basis or by what means you arrived at the prices which were placed upon the goods in making the inventory which you have mentioned.

A. Well, we were directed by the cost-marks on everything that was marked, which was the majority of the goods.

Q. Now, what part, if any, of the goods did you put the cost-mark upon, and how did the cost-mark of the goods that you had put upon the goods compare with the cost-mark on the same kind of goods that were already in the store, if there were any?

Objected to as incompetent and asking for a conclusion and irrelevant and immaterial; which objection was by the court overruled; to which defendant excepted.

A. Why, the goods that were not marked and which we had duplicates of in the store; we compared the two together.

Q. Well, what I am trying to get at is whether or not the cost-mark on the goods that were already in the store that you did not put upon the goods, how they compared with the cost-mark of the goods of the same kind that you did put the cost-mark on, if there was any of that kind.

263 Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

A. They would compare favorably one with the other, the cost would. When fixing the price we put on the goods we went according to the price of similar goods that had the cost-mark on the original; that was the way we ascertained the cost-mark; those that were not marked.

Q. Now, state whether or not there was any goods there that was not marked in accordance with the cost-mark—any class of goods there.

A. There was no goods marked but was marked in accordance with the cost-mark.

Q. And did that apply to all classes of goods, old goods and new goods?

A. Yes, sir.

Q. Well, now, how did the price as placed in the inventory compare with the cost-mark with regard to the older goods in the store?

Objected to as incompetent, irrelevant, and immaterial and calling for a conclusion of the witness; which objection was by the court overruled; to which defendant excepted.

A. In old goods we cut below the cost-mark on those.

Q. How is that?

A. Old goods were cut. I say where the old shelf-worn goods were met we aimed to put the real value on them, what they were really worth.

And you helped take the whole inventory there; participated in taking the whole inventory?

A. Yes, sir.

Q. Now, from your knowledge of goods at that time, I will get you to state to the jury what was the reasonable market value of that stock of goods that was on hand there at the time the sheriff took them away?

Objected to as incompetent, and the witness is incompetent; which objection was by the court overruled; to which defendant excepted.

A. Well, I would think that stock was worth at regular wholesale price—was worth ten thousand dollars.

264 Q. Well, outside of the wholesale price, what was the then reasonable market value of those goods at the time the sheriff took them from the mortgage-s?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

A. I would think they were worth ten thousand dollars.

Q. I will get you to state who was in possession of the stock of goods when you went there to take this inventory or to help take it.

A. Mr. Scott was in possession when I went there.

Q. Who was there, if anybody besides yourself, when the sheriff took the stock of goods?

A. Why, there was—Mr. Crawford was there—Mr. Will Crawford—and Mr. Scott and Mr. Palmer.

Q. You may state what the sheriff did in connection with taking possession of the stock as to the persons which were already in there.

A. Well, he put us all out.

Q. When, if at all, did Mr. Harvey get possession of the stock after that?

A. He didn't get possession afterwards to my knowledge.

Q. How did the sheriff get possession if you recollect?

A. Broke the door in.

Cross-examination by Mr. WISBY:

Q. You say that you were in the employ of Wolfe & Son about one year before they closed business here and at Oklahoma city?

A. Yes, sir; thereabouts.

Q. Were you in their employ prior to their coming here?

A. Yes, sir.

Q. That was included within the year?

A. Yes, sir.

Q. What time did you come to the Territory of Oklahoma in their employ?

A. It was about June the 15th, 1890.

Q. Did you come directly from Topeka here?

265 A. Yes, sir.

Q. What time did you start the goods from Topeka to this place?

A. Why, it was probably a week before that.

Q. It was some time, then, in May that you started to ship your goods?

A. Probably about the first of the month—the first of June; yes, sir.

Q. When did you close business there and begin to box up all your goods?

A. All the goods were shipped as soon as boxed.

Q. That does not answer the question.

A. Probably about the 1st of the month.

Q. You were several days taking them down and boxing them up?

A. Probably three or four days; yes, sir.

Q. It was the latter part of May, then, that you boxed up the goods and shipped them about the first of June?

A. Yes, sir.

Q. Did you come direct to Guthrie?

A. Yes, sir.

Q. Arrived here on the 5th?

A. I came to Guthrie—that is correct.

Q. And you remained here in the employment of Wolfe & Son from that time until they closed business the 15th of December?

A. Yes, sir.

Q. You had no connection with the Oklahoma City stock?
A. I did not work in the Oklahoma City stock.
Q. That is what I am asking you. What day did they close business here, do you remember?
A. I think it was the 15th of December.
Q. How long did you remain here after that date?
A. Why, I remained here until about the first day of February.
Q. Here in the city of Guthrie?
A. Yes, sir.
Q. When did you make this inventory at Oklahoma city *though* you are talking about?

A. I made that in the latter part of December, probably.
266 I don't remember the exact date.

Q. What I want to get at, how many days did you remain here after the business closed on the 15th day of December, before you went to Oklahoma city to engage in making that inventory?
A. Well, it was probably five or six days.
Q. What were you doing during that time?

Objected to as immaterial; which objection was by the court sustained; to which defendant excepted.

Q. How many days were you making the inventory at Oklahoma city?
A. I think we worked four days—four or five—I don't remember just which.
Q. When you finished that you returned to Guthrie?
A. Yes, sir.
Q. At whose instance and request did you go to Oklahoma city to make this inventory?
A. Mr. A. H. Vance's.
Q. When did he request you to do that?
A. Well, I don't remember the exact date.
Q. Was it not the day the business closed up here?
A. No, sir; it was after that—probably a week after that.
Q. Didn't you begin to make that inventory at Oklahoma city before a week after that, or within a week?
A. About a week after that; yes, sir.
Q. Where did you see Mr. Vance?
A. Here in Guthrie.
Q. Was it the next day after the business was closed, or the next day after that, or when was it; can you fix the day that he requested you to go there?
A. It was about a week after the business closed.
Q. And you immediately went?

A. Yes, sir.
267 Q. How many days were you making the inventory?

A. About four or five days. I disremember the exact time.
Q. You say some of the goods had the cost-mark on them and some had not?
A. The majority of the goods had the cost-mark on them. Those that were not marked were very few.

Q. Was there not a large percentage of those goods that were old goods?

A. No; it was a reasonably fair stock of goods.

Q. Well, what per cent. were old goods, goods that had been on hand for a year and over?

A. Well, there was probably thirty or thirty-five per cent., I should judge. Of course, I could not get at it exactly.

Q. Were not all of those boots and shoes old stock, remnants that had been carried down from Topeka and old stock there, and some of the clothing and some other goods?

A. There were probably a few, the same as would occur in any stock that is on hand two or three years.

Q. That stock had originally been brought from Topeka to Oklahoma city, had it not?

A. Some of it had; yes, sir.

Q. And that was a year or more prior to that time, was it not?

A. Yes, sir.

Q. After you had completed the invoice you added ten per cent. for carriage, did you?

A. Yes, sir.

Q. When you were taking this inventory did any one come in and take out some of the goods—any officer?

A. Yes, sir; Burnham, Hanna, Munger's man came there.

Q. With a writ of replevin?

A. Yes, sir; and took out some of the goods.

Q. Did you include them in this invoice?

A. They were taken in the invoice, but were not extended, and so were not added in the footings.

268 Q. What do you mean when you say you did not make the extensions in this invoice as exhibited to you by Mr. James, the attorney for the plaintiff—do you mean that you did not carry out the figures and values of the goods?

A. I mean that I simply took down the description of the goods, the number of yards or number of pieces, as it happened to be, and the cost of it, whatever it happened to be.

Q. The cost-mark on the goods?

A. Yes, sir.

Q. What do you mean when you say you did not make the extensions?

A. Well, you know what the extensions are.

Q. Well, I am asking you to explain what you meant.

A. Well, if there was ten pieces or ten pairs of shoes and cost a dollar a pair, I simply put down ten pairs of shoes at $1.00. If I had extended it over on the other line I would have put $10.00. That is my explanation of extension.

Q. You did not make any of the extensions?

A. No, sir.

Q. Were the extensions made while you were there?

A. No, sir; they were made after I came back to Guthrie.

Q. You don't know anything about the extensions of your own knowledge?

A. No, sir.

Q. Well, that is what I am asking—just your own knowledge, now. They were not made while you were there?

A. No, sir; they was not made while I was there.

Q. Did you keep the doors locked while you were making that inventory?

A. Yes, sir.

Q. Do you know the defendant, C. H. De Ford?

A. I only knew him when he was pointed out to me. I never saw the man before that I knew of.

Q. At the time you left here the stock of goods here was
269 in the hands of the sheriff, was it not, or officers?

A. Yes, sir.

Q. Didn't the officer come to that door several times after you commenced making that inventory and try to get in to levy on those goods?

Objected to as incompetent and immaterial and not proper cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Didn't you know at the time you were making that invoice that the officer was there repeatedly endeavoring to get inside of that store to levy on those goods under the writs of attachment?

Same objection as last above; same ruling and exception.

Q. You were there making that invoice at the solicitation of W. F. Wolfe & Son and Mr. Vance?

A. I was there at the instance of Mr. Vance, not W. F. Wolfe & Son.

Q. You had been employed as salesman in the firm of W. F. Wolfe & Son for a year prior to that time?

A. Yes, sir.

Q. Who assisted you in making that invoice?

A. Mr. Scott and Mr. Palmer.

Q. You were the man that superintended it and bossed the matter, were you?

A. There was no boss. I did the clerical work.

Q. Didn't Mr. Will Harvey ask you to go down there and assist, and was he not the man that had it in charge as agent for Mr. Vance?

A. Mr. Harvey went along with us. I was sent by Mr. Vance. I was employed by Mr. A. H. Vance.

Q. Had not Mr. Vance turned the possession over to Mr. Harvey, and was he not there as agent of Mr. Vance and these other parties?

A. Yes, sir.

Q. And Mr. Vance employed you to go from here after you quit business here to go and make that invoice?

A. Yes, sir.

270 Q. Now, you say the officer broke in while you were there?

A. Yes, sir.

Q. That is, he pushed the door in and came in?
A. He broke the lock of the door.
Q. Now, I will ask you if several times prior to that, while you were there invoicing, he didn't come there and try to get in, and you had understood that he had writs of attachment and was going to levy on those goods and you folks wouldn't let him in.

Objected to as immaterial and incompetent and not proper cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. Why did you have the door locked?
A. Because we didn't want everybody running in there; the goods were under our protection, and the only way to protect the goods was to lock them.
Q. Didn't the sheriff attempt to get in before he broke the door?
A. Yes, sir.
Q. He had made repeated efforts to get in before he broke the lock in, had he not?
A. He did the day he broke in the door at that time.
Q. Why didn't you let him in?

Objected to as immaterial: which objection was by the court sustained. Exception.

Q. Had he been there before that repeatedly and tried to get in and you would not let him in?

Objected to as immaterial and incompetent and not proper cross-examination; which objection was by the court sustained. Exception.

Q. How long did you work for Wolfe & Son at Topeka before coming down here?
A. Why, I disremember just the length of time; a few months.
Q. About how long?
A. Why, I don't know; I don't think over three or four
271 months; something like that; I don't remember just how long it was.
Q. What was the general style of the firm while you were working there?

Objected to as incompetent and immaterial and not cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. You say you reside in Topeka now?
A. Yes, sir.
Q. How long have you resided in Topeka?
A. About four years; ever since I left here.
Q. How soon after you quit business in the city of Guthrie did you return to Topeka?
A. I quit business here the 15th of December and went to Topeka. I left here the first day of February, 1891.
Q. Did you go direct to Topeka?
A. Yes, sir.

Q. Lived there ever since?
A. Yes, sir.
Q. What business are you engaged in there?
A. In the clothing business.
Q. Who with?
A. A. L. House.
Q. Been in that business ever since you left here?
A. Yes, sir.
Q. Now, you say that all of that invoice is in your handwriting, or substantially all of it?
A. I think all of it is in my handwriting except the extensions.
Q. The other parties handled the goods and called them off to you and you wrote down what they called off. Is that it?
A. Yes, sir.
Q. You didn't look at the cost-mark on those pieces of goods that you put down?
272 A. The majority of the goods I saw the cost-mark; yes, sir.
Q. Did you transcribe the first invoice taken or did you write it down originally in this book?
A. That is the original invoice there just as it was taken from the goods.
Q. Is that written in pencil or ink?
A. It is written in ink.
Q. Did you carry your bottle of ink around to each piece of goods or did you sit down at a desk with your pen and ink and have these other gentlemen to call off the goods and you set it down from what they said?
A. Wherever the goods were being measured or being counted I took the ink and pen there and sat on the box and wrote it.
Q. Now, in addition to writing it down you looked at the cost-mark and saw the goods measured, did you?
A. Why, I didn't see how they measured them; no, sir.
Q. Did you see all the cost-marks or did you take their word for some?
A. I would have to take their word for some of them.
Q. Why were you so particular to look at the cost-mark on each piece while you were sitting there and writing it down while they called it off to you?
A. Why, I go on the theory that whatever is worth doing at all is worth doing well, so to be right I would have to see the cost-mark.
Q. Had you instructions when you went to invoice those goods that they would probably be taken away from you before you had completed them or by the time you had the invoice completed by the creditors of Wolfe & Son?
A. No, sir; I had no such instructions.
Q. Did you have instructions to keep the doors locked and keep the officers out?

Objected to as incompetent and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. You say at the time you went to Oklahoma city that
273 Scott was in possession of the stock of goods?
A. Yes, sir.
Q. Was he in the employ of Wolfe & Son?
A. He had been formerly.
Q. Who was this Mont Palmer that assisted you?
A. He was a man that also worked for them.
Q. So all three of you people who made that invoice under the instructions of Mr. Vance and Mr. Harvey were former employees of W. F. Wolfe & Son?
A. Yes, sir.

Testimony of Mont Palmer.

H. M. PALMER, being called as a witness for the plaintiff and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. JAMES:

Q. What is your full name, Mr. Palmer?
A. H. M. Palmer.
Q. Where do you live now?
A. Guthrie.
Q. How long have you lived here?
A. I have lived in Guthrie for about five years.
Q. Where did you live just before coming to Guthrie?
A. Oklahoma city.
Q. Where did you live in December, 1890, at the time this mortgage was given and at the time this inventory was made?
A. I was living in Guthrie.
Q. In Guthrie?
A. Yes, sir.
Q. Do you remember about the time you lived down at Oklahoma city?
A. Well, now, I don't know as I could tell you exactly—
274 you mean the length of time I was there and how long?
Q. Yes, sir.
A. I was there something like a year; something near a year or twelve months.
Q. Who did you work for there, if any one?
A. William F. Wolfe & Son.
Q. Do you remember how long before they gave up the possession of the store there that you worked there for them?
A. How long in the Territory?
Q. No; how long you worked for W. F. Wolfe & Son before they gave up possession of the stock?
A. About six years.
Q. You worked for them, then, at other places besides Oklahoma city?
A. Topeka.

Q. Did you come down here with them at the time they opened up here?

A. I came immediately after they opened up.

Q. And continued with the store at Oklahoma city until about the time the mortgage was given, did you?

A. Well, no; it was before that.

Q. Until before that?

A. Yes, sir.

Q. I will get you to state what knowledge and information you had of the values of the kind of goods that was down there in that store at the time the invoice was taken.

A. Well, I had been in the stock a good deal and I think I ought to pretty nearly know the value; I knew the value of everything of the goods.

Q. You knew what the cost-mark was?

A. Yes, sir; I did.

Q. And you knew how the goods were marked in the first place?

A. Yes, sir.

Q. State how the cost-mark on these goods was placed there
275 in regard to freight, whether it included freight or not.

A. They were marked at the actual cost of the goods.

Q. With or without freight?

A. Without freight.

Q. You heard Mr. Figg testify here about taking the inventory down there?

A. Yes, sir.

Q. Did you have anything to do with that inventory?

A. Yes, sir; I did.

Q. State who helped take that inventory.

A. Mr. Scott and myself and Mr. Figg.

Q. Now, do you know, from your knowledge of the goods, of the class of goods which were there in the store at the time—do you know what would be the reasonable market value of that stock of goods at the time the sheriff took possession of them?

A. Yes, sir; I think so.

Q. Now, you may state to the jury what was the reasonable market value of that stock of goods there in the store which was taken by the sheriff.

A. Well, I would think it would be between nine and ten thousand dollars—something like that.

Q. I will get you to state what business you are engaged in now.

A. Dry-goods business.

Q. Here in Guthrie?

A. Yes, sir.

Q. And have been since the time of the failure of Wolfe & Son?

A. Most of the time; yes, sir; since the failure

Q. Since you took the inventory?

A. Yes, sir.

Q. Were you there at the time the sheriff took possession?

A. I was; yes, sir.

Q. How did he get possession?

A. Forced his way in—broke the door and came in.

Q. What did he do with the persons who were inside at the time?

A. He put us out.

276 Q. I will get you to state in taking that inventory about how it was taken with regard to taking it in bulks, job lots, or in separate parcels.

A. It was taken in separate parcels. Goods by the yard were all measured, and such as boots and shoes were counted, and clothing the same.

Q. Just state how these items were kept here; just state how it was done.

A. We gave the items to Mr. Figg and he took them down.

Q. Well, what part of the stock now did you take down in these separate parcels or items?

A. Did I take down?

Q. No, sir; how much did you, all of you, take down in separate parcels and widths, how much of the stock, and how much was taken in job lots or quantities?

A. It was all taken by parcels—that is, each item and the exact yards or number of it.

Q. What kind of goods was there in the store that is not described in this inventory, if any?

Objected to as incompetent, irrelevant, and immaterial, and the witness not shown to be competent; which objection was by the court overruled; to which defendant excepted.

A. There was none omitted; everything was taken.

Cross-examination by Mr. WISBY:

Q. You say you have been employed by Wolfe & Son for about six years?

A. Yes, sir; I do.

Q. Was you employed for Wolfe & Son all that time or was it part of the time Wolfe & Sons?

Objected to as immaterial and not cross-examination; which objection was by the court sustained; to which defendant excepted.

Q. How long had you worked for them there at Topeka before you came to Guthrie?

A. About five years, I would judge.

277 Q. What time did you come to Oklahoma?

A. In July, 1889.

Q. You went to Oklahoma city?

A. Yes, sir.

Q. How long did you remain at Oklahoma city?

—. Why, I was at Oklahoma city something near a year.

Q. When did you come to Guthrie in the employment of Wolfe & Son?

A. Why, I was only here in Guthrie a short time. I came here to Guthrie, I think, in October, to the best of my knowledge, 1890.

Q. Did you remain then until they closed the business?

A. Yes, sir.

Q. Then you were at Oklahoma city for nearly a year or a little over a year?

A. Something near a year; yes, sir. It might have been a little under or a little over a year; I don't know exactly.

Q. Were you in the employment of Wolfe & Son all the time you were in Oklahoma Territory before you quit business?

A. Yes, sir.

Q. How much stock was taken from Topeka to Oklahoma city?

Objected to as immaterial; which objection was by the court overruled; to which plaintiff excepted.

A. That would be pretty hard for me to say. I don't know as I could tell the exact amount.

Q. Well, just give your best remembrance of about the value of the stock that was removed from Topeka to Oklahoma city in 1889.

A. Well, I would judge seven or eight thousand dollars or something like that.

Q. Did you *do* there at the time the stock was moved from Topeka to Oklahoma city?

A. No, sir.

Q. When had that stock been sent there?

A. Immediately after the opening of this country.

278 Q. Was it taken out of the stock at Topeka?

A. No, sir; not all of it; the greater part of it was new goods.

Q. Was a portion of it culled out of the stock at Topeka?

A. Yes, sir; I think there was some taken out of the stock at Topeka.

Q. Did you take out the best goods or the cullings?

A. We just took the line straight through; we didn't take out cullings or anything.

Q. What proportion of the stock that you invoiced at Oklahoma city was goods that had been sent down there from Topeka?

A. Well, I should judge twenty-five or thirty per cent.; something like that in the stock.

Q. It was clothing, was it not; some of it?

A. Some of it was clothing; yes, sir.

Q. Some of it was old boots and shoes that had been on hand quite a long time?

A. Yes, sir; some were boots and shoes.

Q. Some of them were all soiled by having been in the stock quite a while?

A. Some of them might have been stale as any stock would be, but the principal part of them were new goods.

Q. What other class of goods there had been in stock and brought from Topeka besides clothing, boots, and shoes? At the time that inventory was taken I am referring to.

A. Well, I don't think there was anything.

Q. Was there not some of the dry goods that had been brought from up there?

A. No, sir; I hardly think there was. I don't think there was anything in the dry goods but what was new stuff.

Q. Was there not a lot of old cloaks in that stock down here taken from Topeka?

A. No, sir; there was not.

Q. Were there no cloaks there?

279 A. There were cloaks in the stock; yes, sir.

Q. Was not a large percentage of the stock clothing and gents' furnishing goods?

A. Well, yes, sir; there was.

Q. Was not a large proportion of the gents' furnishing goods old slothes, old clothing that had been in stock for a good while, and of a lower grade?

A. No, sir; it was a very nice clean stock.

Q. Didn't Burnham, Hanna, Munger & Co. take any goods out while you were there invoicing?

A. Yes, sir.

Q. Didn't they take the principal part of the best class of dry goods out of there?

A. Yes, sir; they took some dry goods out.

Q. Didn't they take the principal part of the best class of dry goods out of the store while you were invoicing?

A. I don't know as they took the principal part; they took out quite a good many of them; yes, sir.

Q. Did you put the cost-mark on those goods?

A. I put it on part of them—a good part of them.

Q. What proportion of them did you put the cost-mark on?

A. Well, I don't know as I can tell that.

Q. A third of them?

A. Yes, sir; I would judge a third. They marked them as they came in.

Q. When did you put it on or where?

A. Right at Oklahoma city, there in the store.

Q. Did you say that it was the custom in the cost-mark not to include the cost of getting the goods from the house?

A. We marked them the actual value of them.

Q. What they cost at the wholesale house?

A. Yes, sir.

280 Q. That was the way you marked all these goods?

A. That was the way we marked the goods.

Q. That was the way all the other goods were marked there?

A. Yes, sir; all in the house.

Q. You say the sheriff broke the door in?

A. Yes, sir.

Q. And put you people out?

A. Yes, sir; he ordered us out.

Q. He simply pulled the door open, didn't he?

A. He simply broke the door and then pushed it open after he broke the lock in.

Q. Did he take hold of you gentlemen and throw you out, or politely request you to leave?

A. He ordered us out.

Q. He said he was in possession and for you gentlemen to get out, did he not?

A. Do you mean at Oklahoma city?

Q. Yes, sir; that was what we were talking about.

A. Yes, sir; he told us to get out.

Q. And you went out?

A. I went out—yes, sir—myself.

Q. And how long had your invoice been completed at that time?

A. Not very long.

Q. Just about how long?

A. I think it was completed that day.

Q. What time in the day was this when the sheriff came in?

A. It was in the afternoon, if I remember right.

Q. He had been there before that, had he not, trying to get in, and you wouldn't allow him in?

A. Well, he had been there—yes, sir—just before he broke the door in, once or twice, I should judge.

281 Q. You were hurrying up to get your invoice completed before he got in?

A. We were completing the inventory as quick as we could; yes, sir.

Q. That was the instructions, to complete it as quick as you could, was it not?

A. No, sir; it was not the instructions, to my knowledge.

Q. Well, you say you were hurrying to complete it as quick as you could?

A. Yes, sir; we completed it as quick as we could.

Q. How many days were you making that invoice?

A. Well, I think it was either four or five days; something like that.

Q. Didn't you commence the 22nd or 23rd?

A. I don't know the date.

Q. And didn't the sheriff come in the 25th?

A. I don't remember the dates at all.

Q. Had the sheriff been there before that date, trying to get in?

Objected to as not cross examination and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. You say the sheriff was there a time or two on the day that he broke in. Did he ask to be let in at that time?

Objected to as incompetent and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. Who requested you to go there and take that invoice?

A. Mr. A. H. Vance.

Q. Mr. A. H. Vance, who is one of the parties to this suit?

A. Yes, sir.

Q. Where were you at the time he requested you to go there?

A. In Guthrie.

Q. Under whose directions were you at work there?

A. A. H. Vance.

Q. You say that you have been in the mercantile business since that time.

A. Yes, sir; I have.

Q. All the time since?

A. Well, not all the time; nearly all the time.

282 Q. Who were you with here?

A. E. T. Patton for one.

Q. How long have you been with them?

A. I was with E. T. Patton & Co. for two years and a little over.

Q. Who else have you worked for here?

A. Ramsey Brothers; I am working for them now.

Q. You are working for Ramsey Brothers now?

A. Yes, sir.

Q. Did you ever work for Jacobs?

A. I worked for Jacobs; yes, sir.

Q. The man that run the Boston store here?

A. Yes, sir.

Q. What part of that invoice were you assigned to do in the invoicing?

A. Measuring and counting.

Q. And calling it off to the man who had the book?

A. Yes, sir; calling it off to him, helping do it.

Q. Who did you help call it off?

A. Mr. Ed. Scott.

Q. You and Mr. Scott counted the pieces and done the measuring and called it off to the man that kept the book or the invoice?

A. Yes, sir.

Q. Did you measure every piece?

A. We measured every piece that was measured; yes, sir.

Q. Did you count all the boots and shoes?

A. Yes, sir; counted all the boots and shoes.

Q. Counted all the clothing?

A. Counted all the clothing.

Q. Took every piece of dry goods and measured it to see how much there was in it?

A. Yes, sir; took every piece of goods, excepting when there was full bolts, then we didn't have to do it.

283 Q. How was it with the notions?

A. The notions, counted them the same as we would the boots and shoes, so much a piece; counted them and listed them.

Q. And you put them all in at the cost price and added ten per cent.?

A. Yes, sir; added ten per cent.

Q. And where the cost-mark was not on the piece you compared it to similar goods, graded the goods and put the cost on that the same as on the other?

A. The same as on the other.

By Mr. JAMES: How did you appraise the shelf-worn goods or invoice them, if there were any?

A. At what we thought they would bring; what we thought they would be worth, the actual price, the value.

Q. Well, how did you invoice unsalable goods, if there were any there—the inferior goods, goods in bad condition, if there were any there?

A. To my knowledge, there were none there unsalable.

By Mr. WISBY: You mean when you say at the price they would bring you mean in the market there to be sold there?

A. Yes, sir; on the market, what they would bring.

Q. What you could sell them for there?

A. Yes, sir; because all those goods are sold anyway.

Q. What do you mean, the retail price?

A. Not at regular retail price; no, sir.

Q. Well, you say you invoiced them at what you thought they would bring there in the market. What do you mean by that?

A. Any goods like that, shelf-worn goods, they are always sold at about wholesale price; that is what I meant by that.

Q. That was about the price you put on them?

A. Yes, sir; that was about the price.

Q. The other goods you put the whole price on?

A. What others?

Q. The other goods in the stock, those that were not shelf-worn?

284 A. Marked them at cost—just what they cost.

By Mr. JAMES: You said that you marked the good goods there, that were good in all particulars, at wholesale price?

A. I mean listed them in the inventory—yes, sir.

Q. Now, if the goods which were there in the store cost a certain price originally, and they had become shelf worn and depreciated in value, how did you inventory them as compared with the cost price?

A. What we thought they should be valued at.

Q. Less or more than the cost price?

A. Less, to be sure.

Q. That was the way that you arrived at the value in the invoice?

A. That was the way the value was arrived at—yes, sir.

By Mr. WISBY: Then the statement you made a while ago that these shelf-worn goods you invoiced at wholesale price was not correct?

Objected to as not a correct statement of the witness's testimony; which objection was by the court sustained; to which defendant excepted.

Witness excused.

By Mr. JAMES: I have the original mortgage now, and offer this formally in evidence. We tender in the record the chattel mortgage from W. F. Wolfe & Son to A. H. Vance and others, purport-

ing to be the original mortgage of which a copy was introduced a short time ago.

Said paper is marked Exhibit T.

Objected to as incompetent, first, for the reason that there appears to be an interlineation in this mortgage in a different handwriting from the balance of the mortgage, which has never been explained; and, second, because it is incompetent, irrelevant, and immaterial; that the evidence described in the mortgage is not any indebtedness of W. F. Wolfe & Son, and there is a variance between the indebtedness described in the mortgage and that proven and that
285 alleged in the petition, and for the further reason that the mortgage is not properly executed or recorded or filed for record; which objection was by the court overruled; to which the defendant excepted.

Testimony of A. H. Vance.

A. H. VANCE, being recalled as a witness for plaintiff-, testified as follows:

Direct examination by Mr. JAMES:

Q. I will get you to look at Plaintiffs' Exhibit T, and get you to state what that is.

Objected to because incompetent, and the instrument is already in evidence, and the copy has been read to the jury, and it is irrelevant and immaterial; which objection was by the court overruled; to which defendant excepted.

A. That is the original chattel mortgage that was taken by me and filed for record in the register of deeds' office in Oklahoma city.

Object to his testifying as to when it was filed. Overruled. Exception.

Q. Who filed that—who took it to the register's office?

A. I took it to the register's office myself.

Q. Well, where was it that you took this to the register's office?

A. At the register's office in Oklahoma city—Oklahoma county, I believe it is. I am not sure of it.

Q. Now, is this the one that you took there or the one at Guthrie? Look at it.

A. This is the one that was filed in this county. I did not take this to the office myself.

Q. At whose direction was it taken?

A. Mr. Cunningham placed that on record.

Defendant moves to strike out the testimony of the witness because incompetent, irrelevant, and immaterial to prove any issue in this case; which motion was by the court overruled; to which defendant excepted.

286 Q. I will ask you what was the condition of that paper which you now say was the original mortgage at the time it

was executed and delivered to you by W. F. Wolfe & Son, with regard to those interlineations.

Objected to as incompetent and assuming, and the competency of the witness not shown, and irrelevant and immaterial; which objection was by the court overruled; to which defendant excepted.

A. Just as it is now.

Cross-examination by Mr. WISBY:

Q. Who made this interlineation, Mr. Vance?

A. I am not sure whether it is in the same handwriting as the other or not.

Q. Do you remember the fact of its having been interlined?

A. Yes, sir. I think that is in Mr. Lou. Wolfe's handwriting.

Q. Examine it and see whose handwriting that interlineation is made in.

A. That is my handwriting.

Q. Who wrote the body of the instrument?

A. The body of the instrument is in Lou. Wolfe's handwriting.

Q. That was interlined after the instrument had been drawn up and signed, was it?

A. No, sir; that was interlined before it was signed, after it was drawn.

Q. Where was the instrument written?

A. It was written in the store.

Q. Who was present at the time it was drawn up?

A. There was not anybody present but Mr. Lou. Wolfe and myself.

Q. He drew it up according to your dictation, did he?

A. Yes, sir; I drew it up and he copied it at my request.

Q. And after you had drawn up the original he copied it at your request?

A. Yes, sir.

Q. Then, after he had copied it, it was interlined?

A. Yes, sir.

Q. How did you come to change your mind and put in other parties after you had drawn up one and had him copy it?

287 A. The interlineation was made in Mr. Cunningham's office.

Q. After a consultation with Mr. Cunningham?

A. Yes, sir. After it was prepared and before it was signed and delivered I went to Mr. Cunningham's office for consultation with him, and the interlineation was made, and then it was finally executed and filed.

Q. You had come down here to look after the taking of that instrument, you say?

A. Yes, sir.

Q. You have been an attorney for twenty-five years' practice?

A. Yes, sir.

Q. And you drew the first draft of this instrument according to the way you understood it was to be drawn, and Mr. Wolfe copied it?

A. Yes, sir.
Q. Afterwards you went and consulted Mr. Cunningham, another attorney, and you concluded that you would change it?
A. I had consulted with Mr. Cunningham before that, also.
Q. What day was that written in—the day it was signed?
A. It was written on the 14th.
Q. Whereabouts?
A. It was written in the store.
Q. Here?
A. Yes, sir.
Q. You was here on the 14th, was you?
A. Yes, sir.
Q. What time did you draw the original draft of the instrument?
A. Well, just about the same time—I don't know—it was at the same time.
Q. Did you bring it here with you or did you draw it up after you got here?
A. I did not bring it here with me.
Q. You drew it up after you arrived?
A. Yes, sir.
288 Q. And then Mr. Louis Wolfe copied it, you say?
A. Yes, sir.
Q. You and Wolfe were present at that time?
A. Yes, sir.
Q. Was the old man Wolfe there during the 14th or 15th, while you were talking this matter over?
A. Not at that time he was not.
Q. Was he there on the 14th?
A. No, sir; not at that time.
Q. Had you talked with him about the matter on the 14th?
A. Not on the 14th; I had on the 13th.
Q. Was he here on the 13th?
A. I was at Oklahoma city on the 13th and he was there.
Q. You talked to him about these mortgages at that time?
A. Yes, sir.
Q. What time did you come here?
A. I have forgotten now whether I came here on the night train or on the train in the daytime on the 14th.
Q. You saw Louis at the store?
A. Yes, sir.
Q. You had a talk with him?
A. He was with me.
Q. He came with you from there?
A. Yes, sir.
Q. And then you made the draft of this instrument?
A. Yes, sir.
Q. That was in accordance with your understanding with Mr. Wolfe at Oklahoma city and his son Louis, was it not?
A. Yes, sir.
Q. And where was it signed; there or here?

A. This one was signed here; the one that was filed there was signed there.

289 Q. Before you came up here?

A. No, sir; it was signed afterwards; after I went back.

Q. Then, after consulting with Mr. Wolfe at Oklahoma city and his son Louis, and you and Louis coming here and consulting in the store about it, then you made the first draft of this chattel mortgage?

A. Yes, sir.

Q. Louis then copied it?

A. Yes, sir; that is not exactly correct, although nearly so. He copied it or took it down as I dictated it.

Q. And then you after that went and consulted Mr. Cunningham?

A. Yes, sir; and before that also I consulted with Mr. Cunningham.

Q. And it was after Mr. Wolfe had made the copy according to your dictation and your consultation with Mr. Cunningham that he concluded to change it, and interlined and put other parties in the instrument?

A. No, sir; that is not a correct statement.

Q. Why didn't you put them in at the store, then?

A. The purpose of it all the time was to prepare it for the benefit of those parties as well as ourselves, and it was deemed after consultation that it was better to insert their names in it as well as our own, so that there would be no sort of question about that.

Q. The first object was, then, and your first intention at the time you talked with Mr. Wolfe at Oklahoma city and with Louis up here, at the time you came here and after you arrived here and had drawn the instrument, to make it as a protection to you, yourself, Harvey, and Mr. Clark, who were securities for Wolfe & Son?

A. The first object was to secure the Bank of Topeka, Tootle, Hosea & Co., King & Co., and the Central national bank; that was the first object all the time.

Q. To secure the debts for which you people are securities?

A. Yes, sir; that was the intention all the time.

Q. Why didn't you put their names in the instrument first and leave your own out?

290 A. I can state the reason for that is that when I first considered that I thought that, stating as it is stated in there, it would enure entirely to their benefit and would be so held, and that was the reason that it was stated that way; but after consultation we concluded to take question, if there should be any question in regard to it, entirely out and make it to them direct also.

Q. Did you bring all the date with you to this Territory?

A. I did not.

Q. How did you know the exact amounts of these several debts and the conditions of the contract of indebtedness at the time you made this instrument unless you brought them with you?

A. I got them from Mr. Wolfe—the data.

Q. Whereabouts—Oklahoma city or here?

A. Here. I knew the indebtedness and the amounts, but the dates I didn't know; hadn't any data with me in regard to it.

Q. Did you put in the date of the three notes that represented the indebtedness that you claimed—did you put in this from memory or did you have the notes with you?

A. I did not have the notes with me. Whatever I did in that respect was from memory or from a memoranda that he had. I am not sure whether he had any memoranda in regard to that particular indebtedness or not.

Q. What time did you arrive at Oklahoma city before coming here and taking this mortgage?

A. I think it was on the 13th.

Q. Came direct from Topeka?

A. Yes, sir.

Q. Came down to see about this indebtedness?

A. No, sir; I didn't specially come down to see about this indebtedness when I came down.

Q. Came on a pleasure trip, did you?

A. No, sir.

291 By Mr. JAMES:

Q. Was this chattel mortgage executed in duplicate copies?

A. Yes, sir.

Q. What was done with those two copies—what was done with the other?

A. One was filed in the register's office in Oklahoma city.

Defendant moves to strike out the last answer of the witness as not the best evidence; which motion was by the court sustained; to which plaintiff- excepted.

By Mr. HORNOR: I would like to ask him a few questions on the original cross-examination.

Cross-examination by Mr. HORNOR:

Now, at this time, upon application of the defendant, counsel is permitted to cross-examine the witness further upon his cross-examination-in-chief.

Q. When you were on the stand before you said that there was a mortgage of $4,000 on the old Mr. Wolfe's property. To whom was that mortgage given, Mr. Vance?

Objected to as immaterial and not proper cross-examination; which objection was by the court overruled; to which plaintiff- excepted.

A. C. W. Potwin.

Q. He was the party from whom Mr. Wolfe purchased the lot, was he?

A. Yes, sir.

Q. What was that $4,000 given for?

A. It was given for the price of the lot, excepting $100 and a portion of the money that was invested in improvements.

Q. Who composed the firm of W. F. Wolfe & Son, if you know?
A. W. F. Wolfe and Louis H. Wolfe.
Q. Did you know at any time the firm of W. F. Wolfe & Sons?
A. I have heard that name used. I know but very little about it. I knew something about what was said about it, not very much. I have no personal knowledge about it. I know Fred Wolfe.

292 Q. Don't you know that he was a member of the firm just as much as W. F. Wolfe or Louis H. Wolfe was a member of the firm?

A. No, sir; I don't.
Q. You knew that their paper was signed in the name of W. F. Wolfe & Sons, did you not?
A. I do now know that.
Q. When did you find that out?
A. I really don't know when I did find it out.
Q. Recently?
A. No, sir; I knew of that some time ago.
Q. These notes that they gave to you, some of them were signed W. F. Wolfe & Sons, were they not?
A. I really don't know now whether that is so or not; perhaps it is.
Q. Is not one of them signed with the three individual names of the parties?
A. Yes, sir.
Q. Is not one of them signed W. F. Wolfe & Sons?
A. I am not able to answer that question. The notes are there, I guess, and if you wish to see them you can.
Q. I am asking these questions to find out what you remember, Mr. Vance. Will you state that you did not know that the firm was W. F. Wolfe & Sons?

Objected to as immaterial; which objection was by the court overruled; to which plaintiff- excepted.

A. No; I won't state that. I can state all I know about it if you want to know.

By Mr. ELLIS: If your honor please, when we were here at the trial of this case before we got a certified copy of the record down at Oklahoma city, and we supposed that was among our papers here, but have searched diligently for it, but cannot find it, and yesterday we sent for another copy and are now waiting for it. I

293 don't think it is very important in the case, because this mortgage covers that, and there is no difference in them. We have telegraphed for it again, but it did not come, and we are going to ask leave to offer it when it comes.

By the COURT: I will allow you to offer it when it comes.

Plaintiff- offers in evidence a certified copy of the chattel mortgage on file at Oklahoma city, the same having been identified as Exhibit U.

Objected to as incompetent, irrelevant, and immaterial, and for the further reason that that mortgage which may have been filed,

if any, at Oklahoma city has never been identified and the execution of it has never been proven; that the mortgage offered in evidence describes an indebtedness which is not sued for in this case and upon which plaintiffs cannot recover against the sheriff, who is sued in this action for indebtedness from W. F. Wolfe & Son, and that it is not the best evidence; which objection was by the court overruled; to which defendant excepted.

Counsel reads mortgage in evidence in words and figures as found on pages 60, 61, and 62 of this record, and the same is not again copies herein.

Upon the said mortgage are the following endorsements:

Chattel mortgage. From W. F. Wolfe & Son to A. H. Vance and others. Oklahoma county, Oklahoma Territory, *ss:* This instrument filed for record this 15th day of December, 1890, at 8.20 o'clock a. m., and recorded in the book of chattel mortgages. John M. Martin, county clerk. Territory of Oklahoma, Oklahoma county, *ss:* I, the undersigned, register of deeds within and for the county of Oklahoma, Oklahoma Territory, hereby certify that the within and foregoing instrument is a true and correct copy of the same as it appears of record in my office. Witness my hand and official seal this 20th day of March, 1896. G. A. Beidler, register of deeds. (Seal.)

294 *Testimony of W. K. James.*

W. K. JAMES, being called as a witness for the plaintiff and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. ELLIS:

Q. State your name to the jury.
A. W. K. James.
Q. Where do you live?
A. St. Joseph, Missouri.
Q. Are you acquainted with the firm of Tootle, Hosea & Co.?
A. I was.
Q. Did you have any business relations with that firm while they were in existence?
A. I was their local attorney.
Q. Do you know what became of that firm?
A. It went out of business July 1, 1893, and was succeeded by Tootle, Wheeler & Motter, a firm composed of the same members except two, one additional who came into the firm then, the daughter of one of the other members of the old firm.
Q. What was done with the assets of the old firm?
A. They were transferred to the succeeding firm, Tootle, Wheeler & Motter.
Q. You may state, when this suit was commenced originally, whether you were employed in it.
A. I was in connection with others—was in fact employed at the date the mortgage was given. I think I left St. Joseph that day

and came down here to look after the matter, and then, in connection with Mr. Cunningham and yourself, in behalf of Tootle, Hosea & Co. and their successors in this case.

Q. Now, I will ask you if you know what was done with the notes in this particular case when the firm of Tootle, Hosea & Company ceased to do business?

295 A. I don't think any specification was made of these particular notes; the new firm took all the assets of the old firm and assumed the payment of their obligations, and they were substantially the same, excepting that one member of the firm had died and a daughter of the senior member, K. M. Tootle, came in and W. W. Hosea went out.

Q. Had not a member of the firm died some time before this change?

A. Yes, sir; but his death did not affect the partnership, because there was a partnership agreement that the partnership should run until the termination of the partnership—until July first—so it ran on that way under that name, and at the expiration of the firm of Tootle, Hosea & Co. the new partnership of Tootle, Wheeler & Motter was formed and succeeded to the assets and liabilities of the old firm of Tootle, Hosea & Co.

Q. You have spoken of having come down here to Guthrie and Oklahoma city; when did you arrive at Guthrie, with reference to the time of the giving of this mortgage?

A. It was a day or so afterwards.

Q. On whose behalf and by whose authority did you come here?

A. I came down here directly at the request of the firm of Tootle, Hosea & Co.

Q. Upon this particular matter?

A. Yes, sir; upon this particular matter.

Q. Who, if anybody, did you find in charge of the stock of goods at Guthrie when you got here?

A. Mr. Will Harvey, I believe they called him—the Mr. Harvey that has testified here.

Q. What, if anything, did you do on behalf of Tootle, Hosea & Co. or what did you say to him with reference to the mortgage and his acting under it?

Objected to as incompetent, irrelevant, and immaterial and hearsay; which objection was by the court overruled; to which plaintiff excepted.

296 A. I think I expressly stated to him that we accepted the mortgage; I drew up this notice Mr. Harvey identified on the stand; that is in my handwriting, and told him to put it on the front window here, and I think I saw a similar notice or had one put up also at Oklahoma city. I know I went to Oklahoma city and tried to get in there. I arrived on the night train, I think, and tried to inquire about the matter that night, but Mr. Scott, I believe, the man that was in possession, wouldn't let me in that night, and I couldn't get in until the next day; he told me that he was in possession. I will withdraw that—what Mr. Scott said.

Q. In whose possession have these notes been since the original suit on behalf of Tootle, Hosea & Co. was commenced in this court?

A. They were in possession of Tootle, Hosea & Co. and Tootle, Wheeler & Motter until about the time of the trial of this suit, when I got them from Tootle, Wheeler & Motter; when the suit was set for trial and I came down here to attend the trial I got the notes of them; it was last May, and I have had them in my possession ever since that time.

Q. You received them from Tootle, Wheeler & Motter?

A. Yes, sir.

Q. And you have had them in your possession ever since?

A. Yes, sir; and brought them here for this trial.

Cross-examination by Mr. WISBY:

Q. You say you arrived here a day or two after the mortgage had been taken?

A. Yes, sir.

Q. When did you first hear that the mortgage had been taken?

A. I think by Tootle, Hosea & Co.; they had a wire from the parties here at Guthrie that they had taken a mortgage in their interest; I don't remember definitely about that, but my impression is, my recollection is, that they were notified that they had
297 a mortgage taken in their behalf.

Q. Didn't the party here, Mr. Vance, wire them, and didn't they show you the telegram?

A. Well, I don't remember that, whether they had a telegram or whether it was in the agency's report, the mercantile agency, or whether they had a telegram; I don't remember.

Q. You came down and found that the mortgage had already been executed, and that Mr. Will Harvey was in possession as agent of Mr. Vance?

A. Well, I found him in possession, assuming to act for all the mortgagees.

Q. Was Mr. Vance here at the time?

A. I don't think he was; I don't think I saw him here.

Q. Did you arrive here the 16th or 17th?

A. Well, I think it was the next day after the mortgage was given; judging by the facts as shown by the mortgage, it was the 16th; I think I came here on the noon train of the second day after the mortgage was given.

Q. On the second day?

A. Well, I mean on the second day, counting the 15th as the first say, the next day after the mortgage was given.

Q. Now, on the day before you started, did you learn that a mortgage had been taken or that some kind of security here on some kind of property as security for these notes?

A. I don't recollect; I don't know; the train leaves St. Joseph, I think, about eight o'clock or 8.30 or 9.00 about that date in the evening, and all that I would know is that I knew it in time to make that train, and the train leaving there that evening would put me here the next day at noon.

Q. Was Mr. Will Harvey in possession of the Oklahoma City stock when you went there?

A. No, sir; he personally was not there; I think this Mr. Scott was there.

Q. Mr. Harvey was here at Guthrie?

298 A. Yes, sir.

Q. Scott was in possession?

A. Yes, sir; that was the man there. He said nobody could get in. He said he had instructions from Mr. Harvey; he said he had instructions and wouldn't let me in.

Q. You got off the train here first, did you?

A. Yes, sir.

Q. How long did you remain here before you went to Oklahoma city?

A. I think I went to Oklahoma city that night.

Q. Did you see Will Harvey here on the day that you came here?

A. Yes, sir.

Q. How long after that before you saw Mr. Vance?

A. I don't now recall that; I don't recall seeing Mr. Vance when I was down here at that time. I think I staid here a day or two; probably I might have staid here two days. I don't think I staid here longer than that before I returned, and I have no recollection now of seeing Mr. Vance here.

Plaintiff- rests.

Testimony of C. H. De Ford.

C. H. De Ford, defendant, being called as a witness in his own behalf and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. Wisby:

Q. State your name, age, residence, occupation, and the official position you now hold.

A. My name is C. H. De Ford; my residence is Oklahoma city; my age is past fifty; I am present sheriff of Oklahoma county.

Q. What official position did you hold in the fall of 1890 and the early part of 1891?

A. I was sheriff of Oklahoma county, this Territory.

299 Q. I will ask you if as such sheriff you received writs or orders of attachment which you levied upon a stock of goods in Oklahoma county belonging to W. F. Wolfe & Son.

Objected to as not the best evidence; which objection was by the court overruled; to which plaintiff- excepted.

A. I had such attachments.

Q. I will ask you to examine this paper and see if that is the order or writ of attachment that you refer to or one of them.

A. Yes, sir; it is.

Paper is marked Exhibit One.

Q. I will ask you if you also received these two orders or writs of attachment.

A. Yes, sir.

Papers marked Exhibits Two and Three.

Q. I will ask you if you made that as a part of your return to the writ (handing witness paper), and what is it?

A. Yes, sir; this is an inventory of the stock of goods that was taken and sold on attachment. This is an inventory and appraisement of the stock of W. F. Wolfe & Son at Oklahoma city.

Paper is marked Exhibit 4.

Defendant here offers in evidence the orders of attachment identified by the witness and marked by the stenographer Exhibits One and Two.

Plaintiff objects to the paper marked Exhibit One and purporting to be the writ of attachment in a case entitled M. D. Wells & Co. *vs.* W. F. Wolfe & Son for the following reasons:

First. Because no proper foundation is laid. It is not shown that an affidavit for attachment had been filed or that a bond for attachment had been filed or an undertaking, as required by the statute. It is not shown that any pleading of any kind had been filed, and the writ itself is defective also because it is not made
300 returnable at any time, and no statement is made when the writ is returnable.

Second. Because the writ itself has been, by stipulation of the attorneys for the plaintiff in this case, dissolved and discharged and annulled and set aside, and we offer to show by the record and the stipulation on file in this court that such is the case.

Third. Because it is incompetent, irrelevant, and immaterial.

Plaintiff now offers, in support of its objection, to prove by the records of this court and by the stipulation on file in this case that this particular judgment of M. D. Wells & Co. against W. F. Wolfe & Son has been discharged and dissolved, and not offers the record of this court discharging the attachment in the case of Jaffray & Co. *vs.* Wolfe & Son, and the stipulation signed by the attorneys for the plaintiffs in that case.

Defendant objects as incompetent, irrelevant, and immaterial and not the best evidence of the dissolution of the attachment in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son, and that the judgments of this court in that case are the only records that are entitled to be introduced in evidence upon that question; that the plaintiffs have no right to introduce evidence at this time upon this or any other question, they having rested their case, and the defendant having begun introducing his testimony, and that the stipulation now offered in evidence has been annulled and has never been held valid by the order and judgment of this court in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son.

By the COURT: And now, at this time, upon the application of the plaintiffs, the court directs Mr. De Ford, the witness upon the stand, to stand aside for the purpose of permitting the introduction

of testimony in support of the objection made to the introduction of the instrument identified as Exhibit One; to which order of the court the defendant objected; which objection was by the
301 court overruled; to which the defendant excepted.

Testimony of Louis E. Pitts.

LOUIS E. PITTS, being called as a witness for the plaintiff, upon its objection, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. CUNNINGHAM:

Defendant here objects to any evidence being introduced on behalf of plaintiffs in support of their objections while defendant is making his case, because it is not the proper time, and that the evidence is wholly incompetent, irrelevant, and immaterial; which objection is at this time overruled, the court reserving the right to consider this testimony at this time or in rebuttal of this case; to which ruling of the court the defendant excepted.

Q. Are you clerk of this court?
A. Yes, sir.
Q. And custodian of the records?
A. Yes, sir.
Q. Have you the record of the cases pending against W. F. Wolfe & Son on December 7, 1891?

Objected to as incompetent, irrelevant, and immaterial and as last above; which objection was by the court overruled. Exception.

A. Yes, sir.
Q. State the names of the parties and the number of each case pending at that time.

Objected to as incompetent, irrelevant, and immaterial and for the reasons heretofore stated. Overruled. Exception.

A. Case No. 360, E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son.
Q. Who were the attorneys in that case?
A. This docket here does not show the attorneys. I do not know from the appearance docket.
302 Q. Go on and state the number of the other cases.
A. No. 361, M. D. Wells & Co. *vs.* W. F. Wolfe & Son. It does not show the attorneys, but it should. No. 362, Rice, Stix & Co. *vs.* W. F. Wolfe & Son; No. 367, Alexander Frankenthal & Bro. *vs.* W. F. Wolfe & Son.

Defendant moves to strike out the testimony of this witness as incompetent, irrelevant, and immaterial, and for the further reason that plaintiffs have no right to introduce testimony at this time while defendant is making his defense; which motion is at this time overruled, the court reserving the right to rule upon this question later on.

Plaintiffs now offer in evidence the complaint in case No. 361, M. D. Wells & Co. *vs.* W. F. Wolfe & Son, and the same is here marked Exhibit Five.

Objected to as incompetent, irrelevant, immaterial, to prove or disprove any of the issues in this case on behalf of plaintiffs, and for the further reason that defendant is making his defense and that plaintiffs have no right to introduce testimony during the time that defendant is making his case; which objection was by the court overruled; to which defendant excepted.

Said exhibit is in the following words and figures, to wit:

303 In the District Court of Logan County, Oklahoma Territory.

MOSES D. WELLS, HENRY J. MCFARLAND, and BRENTON R. WELLS, Partners as M. D. Wells & Co., Plaintiffs,
vs.
W. F. WOLFE & LEWIS H. WOLFE, Partners as W. F. Wolfe & Son, Defendants.

Come the above-named plaintiffs and state that the above-named defendants are indebted to them in the sum of twenty-five hundred & $\frac{21}{100}$ dollars for goods, wares, & merchandise sold and delivered to defendants, eleven hundred & sixty and $\frac{70}{100}$ now due, and thirteen hundred & thirty-two $\frac{14}{100}$ dollars to become due March 1st, 1891.

That said defendants refuse to pay the same.

Wherefore plaintiffs pray judgment for $2,500.21, debt, damages, and costs.

SEARS, CUNNINGHAM & WISBY.

TERRITORY OF OKLAHOMA, *County of Logan*, } *ss.*:

Joseph Wisby, being duly sworn, deposes and says that he is one of the attorneys for the plaintiffs, who are absent from this Territory; that he has read the foregoing petition and knows the contents thereof, and that the same is true.

JOSEPH WISBY.

Subscribed and sworn to before me on this the 17th day of December, 1890.

[SEAL.] T. G. RISLEY, *Clerk.*

(Attached to this is an affidavit in attachment, undertaking, and order of the judge.)

304 *Testimony of S. L. Overstreet.*

S. L. OVERSTREET, being called as a witness for the plaintiffs, on their objection to the introduction of testimony, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. CUNNINGHAM:

Here defendant objects to any testimony being introduced on behalf of the plaintiffs at this time for the reason that they have closed their case, and that defendant was making his defense, and that Mr. Overstreet is an attorney for the defendant, helping in the defense; which objection was by the court overruled, it appearing to the court that there are four other attorneys helping in the defense; to which defendant excepted.

Q. Your name is Samuel L. Overstreet, and you are an attorney of this court?

A. Yes, sir.

Q. I will ask you to examine that instrument (handing witness paper). Have you ever seen that before?

A. Yes, sir; I have.

Q. You may state if you was present when it was signed.

Objected to as incompetent, irrelevant, and immaterial, and for the further reason that plaintiffs have no right to introduce testimony at this time. Overruled. Exception.

A. I was present when Harper S. Cunningham signed it. I do not now remember whether the others had signed it and then agreed to it or whether they signed it in my presence.

Q. What was the state of the record of the Jaffray case at the time that was signed?

Objected to as incompetent, irrelevant, immaterial, not the best evidence, and for the further reason that plaintiffs have no right to introduce testimony at this time, and to the competency of
305 the witness; which objection was by the court overruled; to which defendant excepted.

A. The Jaffray case had on that day been tried and submitted to the court on a demurrer to the evidence and was then pending on a demurrer to the evidence and had not been decided.

Defendant moves to strike out the last answer as wholly irrelevant, immaterial, and incompetent to prove or disprove any of the issues in this case, and not the best evidence; which motion was by the court overruled; to which defendant excepted.

Q. The jury had been discharged?

A. The jury had been discharged and the case had been submitted and taken under advisement by the court.

Q. About what hour of the day was that signed?

A. It was some time after night on that day; my impression now is eight or nine or ten o'clock; somewheres along there.

Q. Where was it signed?

A. In the office of Harper S. Cunningham, in Guthrie, Logan county, Oklahoma Territory.

Q. Who was present at the time they signed it?

Objected to as incompetent, irrelevant, immaterial, and because plaintiffs have no right to introduce testimony at this time; which objection was by the court overruled. Exception.

A. Mr. Bierer, of the firm of Bierer & Cotteral, and Mr. Cunningham, of the firm of Cunningham & Wisby—Mr. Harper S. Cunningham—and myself and J. W. Milligan were present that I am now sure of; I am not certain whether anybody else was present or not.

Q. Who were the attorneys that tried the Jaffray case?

Objected to as incompetent, irrelevant, immaterial, and not best evidence; which objection was by the court overruled. Exception.

A. I assisted as counsel in that case. My recollection is that George S. Cunningham, of the firm of Cunningham & Wisby,
306 and Judge Bierer, of the firm of Bierer & Cotteral, were the leading counsel and attorneys in the case. I don't remember whether Mr. Wisby and Mr. Cotteral sat in the case or not.

Q. Didn't Mr. Wisby himself argue the demurrer to the evidence?

Defendant objects as to last question. Overruled. Exception.

A. It is my recollection that he did.

Q. That is Joseph Wisby, who is an attorney here, an attorney in this case?

Objected to as above. Overruled. Exception.

A. Yes, sir.

By Mr. WISBY: Mr. Overstreet, is it not a fact that Mr. Cunningham did not participate in that Jaffray trial, and was absent from town at the time?

A. It is not my present recollection, Mr. Wisby; it may be a fact, but it is not my present recollection.

Defendant moves to strike out the testimony of the witness because it is incompetent, irrelevant, immaterial, and not the best evidence. The court reserves the right to rule upon this until the conclusion of the testimony of the witness, and, the witness not testifying further, overrules same. Exception.

Plaintiff offers in evidence a journal entry showing that in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son that Bierer & Cotteral and Cunningham & Wisby appear as attorneys on the records of this court, and the same is marked Exhibit Seven.

Objected to as not the best evidence of the record, and the plaintiffs have no right to introduce testimony at this time; which objection

was by the court overruled. Exception, the court reserving the right to strike out the testimony further on in the case.

Said journal entry is in the following words and figures, to wit:

307 In the District Court of the First Judicial District of Oklahoma Territory, Holding Terms at Guthrie for Logan County.

MOSES D. WELLS, HENRY J. McFARLIN, and BRENTON R. WELLS, Partners as M. D. Wells & Co., Plaintiffs,
vs.
W. F. WOLFE and LOUIS H. WOLFE, Partners as W. F. Wolfe & Son, Defendants.

Now, on this day, this cause come on for trial, the plaintiffs appearing by their attorneys, Cunningham & Wisby & Bierer & Cottrell, and the defendants by their attorneys, Dille & Cunningham.

It appearing from an inspection of the files and papers in the case that this action is founded upon an account for goods sold and delivered to defendants by plaintiffs;

That defendants are indebted to plaintiffs in the sum of two thousand four hundred and eighty-nine dol ars, and that defendants have filed their answer herein admitting their indebtedness to plaintiffs in the amount claimed, and consenting that plaintiffs have judgment for two thousand four hundred and eighty-nine dollars, as prayed for in their complaint;

It further appears to the court that orders of attachment were duly issued out of this court at the instance of the plaintiff- herein and against the property of the defendants; which orders of attachment so issued were directed to the sheriff of Oklahoma county, Oklahoma Territory, and by him levied upon the stock of goods, wares, and merchandise and furniture and fixtures situated in a building in Oklahoma city formerly occupied by defendants for the purpose of trade and business, and said stock of goods, wares, and merchandise and furniture and fixtures were sold by order
308 of this court at public sale for the price and sum of three thousand seven hundred dollars; which sum, after deducting two hundred dollars for costs and charges, was ordered to be paid into the Bank of Indian Territory of Guthrie:

It is therefore ordered and adjudged by the court that plaintiffs have and recover of and from the defendants the sum of two thousand four hundred and eighty-nine dollars for their debt, and that this judgment bear interest at six per cent. per annum until paid, and for all costs and charges in this behalf laid out and expended.

It is further ordered and adjudged by the court that said attachment liens of plaintiffs upon the goods, wares, and merchandise and furniture and fixtures of defendants be, and the same *is*, in all things confirmed and sustained, and the proceeds of said sale in amount sufficient to pay judgment and costs be turned over to plaintiffs.

It is further ordered that said Bank of Indian Territory, upon presentation of certified copy of this order, pay to Cunningham & Wisby, attorneys for plaintiffs, the sum of two thousand four hundred and eighty-nine dollars and the costs of suit in amount as certified by clerk.

E. B. GREEN.

TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

I, T. G. Risley, clerk of said district court, certify the above and foregoing to be a true and perfect copy of the original judgment and order made in said case as the same remains of record and on file in my said office.

Witness my hand and the seal of said court. Done at Guthrie this April 2nd, 1891.

[SEAL.] T. G. RISLEY,
Clerk Dist. Court.

(End. on back:) Filed April 6, 1891. T. G. Risley, clerk. Recorded, Book 2, jour., p. 86.

309 Paper identified by witness Overstreet is here marked Exhibit Six.

It appearing to the court at this time that the question as to whether or not this attachment writ has been annulled cannot be determined by the court from an inspection of the records of this court without the aid of extrinsic testimony, the court at this time overrules the objection of counsel to the introduction of the writ of attachment, upon the ground, as alleged, that the same has been by stipulation of record and judgment of this court annulled, and permits counsel for plaintiff- to offer testimony upon that question in rebuttal; to which ruling of the court the plaintiffs then and there excepted.

Defendant reoffers this writ of attachment in evidence and the return of the sheriff in the case of M. D. Wells & Co. *vs.* W. F. Wolfe and Son.

Defendant also offers the writ of attachment and return of the sheriff in the case of Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son, from the district court of Logan county, identified as Exhibit Two.

Plaintiff- objects to Exhibit Number Two for each of the reasons stated as objections to the writ in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son, except the one relative to the stipulation, and for the further reasons that it appears to have been issued on the 26th day of December, 1890, and is upon its face made returnable on the 2nd day of March, 1891, and it does not state the names of any plaintiffs; which objection was by the court overruled; to which plaintiffs excepted.

Defendant offers as a part of the return of the officer of the orders of attachment, especially the one of M. D. Wells & Co. *vs.* W. F. Wolfe & Son, this inventory and appraisement as a part of

that return; which said inventory and appraisement is marked Exhibit 4.

310 Objected to as incompetent, irrelevant, and immaterial and not sufficiently identified and not attached to the return or as a part of any writ issued in this case or in any other to be made a part of the record in this case.

Testimony of C. H. De Ford.

C. H. De Ford, being recalled for defendant, testified as follows:

By Mr. Wisby (handing witness Exhibit 4): Mr. De Ford, I will ask you to examine that paper and see what it is.

A. This is the inventory and appraisement of the attachment suit of M. D. Wells & Co. and Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son.

Q. Was that attached to the original papers?

A. That was attached to the original attachment papers.

Q. And was made a part of your return?

A. Yes, sir; was made a part of my return.

Plaintiffs object as not the best evidence; which objection was by the court overruled; to which plaintiffs excepted.

Defendant now offers in evidence the order of sale identified by the witness as Exhibit 3.

Objected to as incompetent, irrelevant, immaterial, and not within the issues of this case and hearsay, and does not tend to prove any fact or issue in this case.

Defendant offers at the same time the return, which is attached to this order as a part of the order, and the certified copy of the advertisement, to show that the order was properly returned, all attached to said Exhibit 3.

Objected to as last above; which objections are by the court overruled; to which plaintiffs excepted.

The said Exhibits 1, 2, 3, and 4 are in the following words and figures:

Exhibit 3 is found — pp. 288 to 291, inclusive.

311 The Territory of Oklahoma, } ss:
Oklahoma County, }

We, C. H. De Ford, sheriff of Oklahoma county and Territory of Oklahoma, and G. Washington Pence and G. A. Mitchell, two residents of Oklahoma county, the said G. Washington Pence and G. A. Mitchell being first duly sworn by me to make a true inventory and appraisement of all property attached as the property of W. F. Wolf & Son on an order of attachment issued in an action wherein Burnham, Hanna, Munger & Co. *is* plaintiffs and W. F. Wolf & Son *is* defendants, now pending in the district court of Logan county, do make the following inventory and appraisement of said property, to wit:

Lots 21, 22, and 23, in block 34, in Oklahoma city, Oklahoma county, appraised at twelve hundred dollars each.. $3,600
Improvements on said lots appraised at..... 1,500

Endorsed: "Filed Jan. 7, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy."

312 EXHIBIT 1.

Writ of Attachment, District Court.

THE TERRITORY OF OKLAHOMA, *Logan County,* } ss:

District Court of Logan County.

M. D. WELLS AND CO., Plaintiff-,
vs.
W. F. WOLF AND SON, Defendant-.

The Territory of Oklahoma to the sheriff of Oklahoma county, Greeting:

You are commanded to attach and safely keep the lands, tenements, goods, chattels, stocks or interest in stocks, rights, moneys, and effects of the defendants, W. F. Wolf and Lewis Wolf, partners as W. F. Wolf and Son, not exempted by law from being applied to the payment of the claims of the plaintiffs, Moses D. Wells, Henry J. McFarland, and Brenton R. Wells, partners as M. D. Wells and Company, or so much thereof as will satisfy their claim for twenty-five hundred dollars and $\frac{24}{100}$ dollars and fifty dollars, the probable costs of this action.

You will make due return of this order *on the* forthwith.

Witness my hand and the seal of said court, at Guthrie, Oklahoma Territory, this 18th day of December, A. D. 1890.

T. G. RISLEY, *Clerk,*
[SEAL.] By W. P. MEADOWS, *Deputy.*

Endorsed: "Order of attachment. District court, Logan county. Doc. 1, No. 361, page 367. M. D. Wells and Co. *vs.* W. F. Wolf ans Son. Amount sworn to, $2,500.00; probable costs, $50.00. Returnable forthwith. T. G. Risley, clerk; W. P. Meadows, deputy. Returned and filed Jan. 7th, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy."

313 *Sheriff's Return.*

December 18th, 1890, received this order and, according to the command thereof, I did, on the 27th day of December, 1890, at 5 o'clock p. m., in the presence of G. Washington Pence and G. A. Mitchell, two credible persons, residents of the county, attach the following goods and chattels, to wit: All of the goods and chattels described in the inventory and appraisement hereto attached, marked Exhibit "A" and made a part of this return, and after administering an oath to said G. Washington Pence and G. A. Mitchell to make a

true inventory and valuation of said property in writing I then, with them, made an inventory and appraisement of said property which is herewith returned. I also on the same day delivered to W. L. Harvey a certified copy of this writ. He, the said Harvey, was in possession of said property when I made the levy. I also posted upon the building over each of the lots a certified copy of this writ. I levied on lots 21 and 22, in block 34, Oklahoma city, Oklahoma county, O. T., subject to a former attachment levied on the 15th day of December, 1890, in the case of Pleasants Goodwin & Co. *vs.* W. F. Wolfe & Son. I levied on lot 23, in block 34, Oklahoma city, Oklahoma county, subject to a former attachment levied on the 22nd day of December, 1890, in the case of D. W. Haylock *et al. vs.* W. F. Wolfe & Son.

Given under my hand this 5th day of January, 1891.

C. H. DE FORD,
Sheriff of Oklahoma County, O. T.

(The inventory and appraisement above referred to as Exhibit "A" is found herein, beginning on page 292 and ending on page 303.)

Filed Jan'y 7, 1891.

T. G. RISLEY, *Clerk.*

314 *Sheriff's Fees.*

Making levy	50
Summoning appraisers	25
Swearing appraisers	50
Appraising property, 6 days, at 1.00 per day	6 00
Taking inventory, 6 days, at 2.00 per day	12 00
Serving copy of attachment	50
1 copy	25
3 copies of attachment	75
Making return	50
	$21 25

Appraisers' Fees.

G. Washington Pence, appraising property, 6 days, at 50c.	3 00
" " " taking inventory, 6 days, at $2 p'r day	12 00
Total	$15 00
G. A. Mitchell, appraising property, 6 days, at 50c. p'r day	3 00
" taking inventory, 6 " " $2.00 "	12 00
Total	$15 00
Ed. Scott, for handling goods and helping appraisers, 6 days, a- $2.00	12 00

C. H. DE FORD,
Sheriff of Oklahoma County, O. T.

J. M. Martin, to recording copy of attachm't in his recorder's office $1 00

Endorsed: 361. Filed Jan. 7th, 1891. T. G. Risley, clerk, by W. P. Meadows, dept. Ex. One.

315 EXHIBIT TWO.

Order of Attachment, District Court.

TERRITORY OF OKLAHOMA, } ss:
Logan County, }

District Court of Logan County.

BURNHAM, HANNA, MUNGER & COMPANY, Plaintiffs, }
vs.
W. F. WOLF & SON, Defendant-. }

The Territory of Oklahoma to C. H. De Ford, sheriff of Oklahoma county, Greeting:

You are commanded to attach and safely keep the lands, tenements, goods, chattels, stocks or interest in stocks, rights, moneys, and effects of the defendants, W. F. Wolfe & Son, not exempt by law from being applied to the payment of the claims of the plaintiff-, Burnham, Hanna, Munger & Company, or so much thereof as will satisfy plaintiffs' claim for thirty-five hundred dollars and three hundred dollars, the probable costs of this action.

You will make due return of this order on the 2nd day of March, A. D. 1891.

Witness my hand and the seal of said court, at Guthrie, Ok. Ty., this 26th day of December, A. D. 1890.

[SEAL.] T. G. RISLEY, *Clerk.*

Endorsed: Order of attachment. District court, Logan county. Doc. 1, No. 398, page 405. Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son. Amount sworn to, $3,500.00; probable costs, $300.00. Returnable March 2d, 1891. Returned and filed Jan. 7th, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy.

316 *Sheriff's Return.*

TERRITORY OF OKLAHOMA, }
Oklahoma County. }

December 26, 1890, received this writ, and I did, on the 27th day of December, 1890, at 5.10 o'clock p. m., in the presence of G. Washington Pence and G. A. Mitchell, two credible persons residents of the county, attach the same goods and chattels under this writ that *was* attached and appraised in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son, as shown by the inventory & appraisement returned in that case on an order of attachment issued out of and returned to the district clerk's office of Logan Co., O. T.; to which return I herewith refer: Lots 21 & 22 and buildings thereon, in block 34, in Oklahoma city, Oklahoma county, Oklahoma Territory,

attached subject to a former attachment in case of Pleasants Goodwin & Co. *vs.* W. F. Wolfe & Son; also subject to former attachment of M. D. Wells & Co. *vs.* W. F. Wolfe & Son; lot 23 and building thereon, in block 34, in Oklahoma city, Oklahoma county, O. T., attached subject to a former attachment of W. D. Hadock *vs.* W. F. Wolfe & Son; also subject to a former attachment of M. D. Wells & Co. *vs.* W. F. Wolfe & Son. All the goods of W. F. Wolfe & Son that *was* attached in a former attachment of M. D. Wells & Co. *vs.* W. F. Wolfe & Son are hereby attached subject to that attachment. I also, on the same day, delivered to said W. L. Harvey, whom I found in possession of said property, a certified copy of this writ. I also posted upon the building situated on each of the above-described lots a true & certified copy of this writ.

Fees.

Making levy	50
Serv'g attachm't	50
4 copies of attachment	1 00
Making return	50
	$2 50

Given under my hand this 5th day of Jan'y, 1891.

C. H. DE FORD,
Sheriff of Oklahoma County, O. T.

To J. M. Martin for recording copy of attachment in his office	$1 00
Will H. Clark, dist. clerk, recording copy of attachment in his office	1 00

Endorsed: No. 398. Returned and filed Jan. 7th, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy.

317 *Inventory and Appraisement of Property Attached.*

THE TERRITORY OF OKLAHOMA, } ss:
Oklahoma County, }

We, C. H. De Ford, sheriff of Oklahoma county and Territory of Oklahoma, and G. Washington Pence and G. A. Mitchell, two residents of Oklahoma county, the said G. Washington Pence and G. A. Mitchell being first duly sworn by me to make a true inventory and appraisement of all property attached as the property of W. F. Wolfe & Son on an order of attachment issued in an action wherein Burnham, Hanna, Munger & Co. *is* plaintiffs and W. F. Wolfe & Son *is* defendants, now pending in the district court of Logan county, do make the following inventory and appraisement of said property, to wit:

Lots 21, 22, and 23, in block 34, in Oklahoma city, Oklahoma county, appraised at twelve hundred dollars each	$3,600
Improvements on said lots appraised at	1,500

Endorsed: Filed Jan. 7, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy.

318 EXHIBIT THREE.

Sheriff's Sale.

By virtue of an order of sale issued out of the district court of Logan county, Oklahoma Territory, on the 19th day of January, A. D. 1891, in the cases of M. D. Wells & Co. and Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son, I will, on Wednesday, February 4th, 1891, at 10 o'clock a. m. of said day, at the store building formerly occupied by W. F. Wolfe & Son, in Oklahoma city, Oklahoma Territory, offer for sale and sell at public outcry to the highest bidder for cash in hand the entire stock of merchandise attached in said actions and located in the store building formerly occupied by said W. F. Wolfe & Son, in Oklahoma city, Oklahoma Territory. Said goods will first be offered for sale in job lots as follows: 1st, all the boots and shoes; 2nd, all the hats and caps; 3rd, all the men's and boys' clothing; 4th, all the dry goods and notions and other merchandise; 5th, all the dry goods and furniture. All of said goods will then be offered for sale in bulk, and if a higher bid is received therefor than the aggregate bids on job lots the same will be struck off to such bidder; otherwise to the highest bidder for each of said job lots respectively. Should there not be sufficient time to complete this sale on said day the same will be continued from day to day, at the same place, and beginning at the same hour each day until the sale is completed.

Witness my hand this 20th day of January, 1891.

C. H. DE FORD,
Sheriff of Oklahoma County.

Proof of Publication.

INDIAN TERRITORY, } ss:
Oklahoma City, }

On this 6th day of February, 1891, personally appeared before me J. J. Burke, who, being by me first duly sworn, on oath says that he is the publisher of the Oklahoma Journal, a newspaper published daily and weekly at Oklahoma city and in general circulation in both land districts of Oklahoma Territory, and that
319 publication notice, a copy of which is hereto attached, was regularly published in said paper, in daily and weekly, for ten successive days, the first publication being and appearing in the issue of the 31st day of January, 1890.

J. J. BURKE.

Subscribed and sworn to before me the day and year above written.

D. F. MACMARTIN,
[SEAL.] *Notary Public.*

Com. expires Jan. 1, '95.

Printer's fees..... 18.25
Notary..... .25

$18.50

Filed Feb. 24, 1891.

T. G. RISLEY, *Clerk.*

This paper is attached to the following:

In the District Court of the First Judicial District of Oklahoma Territory, Holding Terms at Guthrie for Logan County.

E. S. JAFFRAYS AND COMPANY, M. D. WELLS AND CO., RICE, STIX and Co., B. Frankenthal and Bros, Sweet, Dempster and Co., and John V. Farwell and Co., and Burnham, Hanna, Munger and Co., Plaintiffs,

vs.

W. F. WOLFE and LEWIS H. WOLFE, Partners as W. F. Wolfe & Son, Defendants.

Now, on this day, comes the plaintiffs, by their attorneys, and the motion heretofore filed, praying for the sale of stocks of goods attached in these cases, comes on to be heard, and the court, being well and sufficiently advised in the premises, doth order and adjudge that L. T. Shockey, sheriff of Logan county, expose and sell to the highest bidder for cash, at public auction, after advertising the same as required by law on execution sales of personal property,
320 said stock of goods contained in the building lately occupied by W. F. Wolfe and Son, in the Herriott building, in the city of Guthrie, for the purpose of trade and business and levied upon by him under the writs of attachment in favor of the above-named plaintiffs and against said W. F. Wolfe and Son. It is further ordered by the court that C. H. De Ford, sheriff of Oklahoma county, expose and sell to the highest bidder for cash, at public auction, as on execution sales of personal property, said stock of goods contained in the building lately occupied by W. F. Wolfe and Son for the purpose of trade and business in Oklahoma city and levied upon by him under writs of attachment in favor of the above-named plaintiffs and against said W. F. Wolfe and Son.

It is further ordered that said stock of goods be sold by the sheriffs of Logan and Oklahoma counties respectively, in bulk or in job lots, as follows: The boots and shoes shall be offered first; the hats and caps next; then the men's and boys' clothing; then the dry goods and notions and all other goods, if any; then the furniture and fixtures. The said sheriffs shall then add the several amounts bid for said goods, furniture, and fixtures in job lots, and *he* then shall offer the whole stocks in bulk, and if *he* gets a higher and better bid by offering them in bulk than in job lots *he* shall sell the same in bulk; otherwise *he* shall sell the same in job lots, as aforesaid.

(Signed) E. B. GREEN, *Judge.*

Attest: T. G. RISLEY, *Clerk*,
By W. P. MEADOWS, *Deputy.*

I, T. G. Risley, clerk of the district court, hereby certify the within and foregoing to be a true and full and correct copy of the order of the court as the same appears of record in my office.

January 19th, 1891.

T. G. RISLEY, *Clerk*,
[SEAL.] By W. P. MEADOWS, *Dept.*

Endorsed: E. S. Jaffray & Co. *et al. vs.* W. F. Wolfe & Son. Order of sale. Filed February 24, 1891. T. G. Risley, clerk.

321–382 *Sheriff's Return.*

Received this writ January 20th, 1891, and on the 20th day of January, 1891, I advertised in the Oklahoma Journal, a newspaper published daily and weekly at Oklahoma city and in general circulation in Oklahoma county, that I would on February 4th, 1891, at 10 o'clock a. m., at the store building formerly occupied by W. F. Wolfe & Son, in Oklahoma city, Oklahoma Territory, offer for sale and sell at public outcry to the highest bidder, for cash in hand, the entire stock of merchandise attached in said actions of M. D. Wells & Co. and Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son; and at the time and place mentioned in the notice, which is hereto attached, I offered said stock of goods first in job lots, as advertised, and then the entire stock, and, having received a larger bid for the entire stock than I had for the stock in job lots, I sold the same in bulk to W. J. Milligan, his being the highest and best bid made therefor, for thirty-seven hundred dollars. After said sale was made and before any money had been paid to me I served an order on W. J. Milligan from the clerk of Logan county ordering him to pay into the Bank of Indian Territory thirty-five hundred dollars, and the balance to be paid to me, which he has done.

Fees.

Printer's bill	$9 25
Sheriff's costs:	
Per cent. for selling goods	51 00
Advertising property for sale	50
Selling "	50
Making returns	50
Taking care of goods from December 27, 1890, to Feb. —, 1891, $2 per day	76 00
Insurance paid to Eby & Guthrie	65 00
Paid out for fuel	2 00
House rent due Mrs. G. H. Wolfe, one month and 10 days	60 00
	195 50

C. H. DE FORD,
Sheriff of Oklahoma Co., O. T.

Filed February 16, 1891.

T. G. RISLEY, *Clerk.*

(Here follows inventory marked Exhibit Four, which is omitted in printing, per stipulation. See side page 818.)

383 And now, at this time, upon the application of the defendant, the witness C. H. De Ford is withdrawn from the witness stand for the purpose of permitting counsel for the defense to introduce the witness J. M. Brooks, who is necessarily compelled to absent himself from this place.

Testimony of J. M. Brooks.

J. M. BROOKS, being called as a witness for the defendant, and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. COTTERAL:

Q. State your name, age, and place of residence.
A. My name is J. M. Brooks; age, forty-five; live in Guthrie.
Q. What is your business, Mr. Brooks?
A. I am in the dry-goods and clothing business.
Q. How long have you been in that business?
A. About twenty-six years.
Q. When did you commence that business in the city of Guthrie?
A. In 1889, about the middle of May, if I remember right, or some time in the month of May, 1889.
Q. From what place did you come to the city of Guthrie?
A. Topeka, Kansas.
Q. How long did you live in Topeka, Kansas, just prior to coming to Guthrie?
A. About ten years. I came to Topeka in 1879.
Q. Were you in the dry-goods and clothing business, either for yourself or for others, during all that time in Topeka?
A. I was in business for myself eight years of that time in Topeka—about eight years.
Q. You may state whether, while you lived in Topeka, you were acquainted with William F. Wolfe and Louis H. Wolfe, known here in the Territory as William F. Wolfe & Son—that firm.
384 A. No, sir; I was not personally; knew them as a firm in business there, but I did not know the gentlemen personally.
Q. Do you know of the fact that they were engaged in business in the city of Topeka?
A. Yes, sir.
Q. How far were they from your place of business in Topeka?
A. For the first five years of my residence in Topeka they were at least a mile—about a mile; when I was on the south side and they were on the north side of the river. The last three years, why we were only a few doors away.
Q. In the same block during the last three years where you did business?
A. Well, for two years of that time, or about two years, they moved, perhaps, one-half a block away or a block further into a new store—into a new building.

Q. That would be about a block and a half away, you mean, from your place of business?

A. Yes, sir; on the same street.

Q. Do you remember the occasion of their coming to Topeka?

Objected to as immaterial; which objection was by the court overruled; to which plaintiffs excepted.

A. Why, I don't know as I do; nothing in particular. I remember about the time they went there; yes, sir. I remember the time they opened a large concern there.

Q. Now state what you know about the place where they first had goods there in Topeka before they opened up, if you recollect.

Objected to as immaterial, too remote, and incompetent.

By the COURT: What is the purpose of that?

By COUNSEL: If the court please, we are trying to get a history of these parties. We have alleged here in this answer a conspiracy.

The objection is by the court sustained; to which defendant excepted.

385 Q. State whether or not it is a fact, Mr. Brooks, that at the time you first knew of the Wolfes referred to being at Topeka they had a stock of goods *or* their store in a basement, and their goods had become all mouldy and were all mouldy while they were there.

Objected to as too remote, leading, assuming, and incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. You may describe the character of the goods which William F. Wolfe and Louis H. Wolfe had in Topeka, so far as you observed them, and from the time you knew of their having goods there until they left Topeka.

A. I don't know anything about that; never was in their store in my life in Topeka that I remember of.

Q. Well, what kind of a stock did they have at the time they were a few doors from where your place of business was? I mean to say, at the time they did business a few doors from where you did business and at the time they did business a block or a block and a half from your place of business.

Objected to, as the witness is incompetent, and incompetent, irrelevant, and immaterial, and too remote; which objection was by the court sustained; to which defendants excepted.

Q. When you left the city of Topeka, do you remember whether Wolfe & Son were there at that time?

A. They were; yes, sir.

Q. Now, what kind of a stock did they have at that time in Topeka?

A. Why, I couldn't say; I never was in the store there in the world. They had the largest store in North Topeka; this was

North Topeka. The last three years that I was in business in Topeka was in North Topeka, and they had the largest store there; had a store about one hundred feet deep and fifty feet front; all one room.

Q. You did not notice their stock?

A. Only by going by; as one merchant would notice
386 another, I noticed. A. I couldn't tell anything about their stock, for I never was inside their store.

Q. Now, in the year 1889, Mr. Brooks, you may state if you know anything about the reputation of Wolfe & Son for credit in the commercial world.

Objected to as incompetent, irrelevant, and immaterial, no proper foundation laid, and not the proper way to prove it; which objection was by the court overruled; to which plaintiffs excepted.

Q. What did you know, Mr. Brooks, about Wolfe & Son buying a large bill of clothing in Milwaukee or other eastern city while they were in Topeka and shortly before they removed to Oklahoma Territory?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendants excepted.

Q. Mr. Brooks, you may state if you know anything about the stock of goods that W. F. Wolfe & Son had in the city of Guthrie in December, 1890.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiffs excepted.

A. I bought the stock of the sheriff.

Q. Did you take any part in the invoice or appraisement of the stock of goods here in the city of Guthrie of W. F. Wolfe & Son for the sheriff?

Objected to as incompetent, irrelevant, and immaterial, and no proper foundation laid; which objection was by the court sustained; to which defendant excepted.

Q. You say you bought the stock of goods at sheriff's sale?

A. Yes, sir.

Q. Now, did you examine the stock at that time or before that time?

A. I examined it before that time.

Q. Did you examine it as early as December, 1890?

Objected to as incompetent, irrelevant, immaterial, and not within the issues of the case; which objection was by the court sustained. Exception.

387 Q. I will ask you, Mr. Brooks, if you examined that stock immediately after it was turned over to the mortgagees and seized by the sheriff of this county.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. Do you know of the fact, Mr. Brooks, that certain parties under chattel mortgage took possession of the stock of goods of Wolfe & Son here in Guthrie?

Objected to as last above; same ruling and exception.

Q. You may state now, Mr. Brooks, if you assisted the sheriff of Logan county, Oklahoma Territory, in making an inventory of the Guthrie stock of William F. Wolfe & Son a few days after the mortgagees had taken possession of the stock in December, 1890, and if at that time, while the sheriff was making his inventory, in which you assisted, you found that the mortgagees or those representing them making their inventory had left the goods in this condition, namely, that they had torn off the original cost-mark and other marks or stamps off of the goods that would show their cost and the makers of the goods.

Objected to as a number of questions in one, leading, assuming, incompetent, irrelevant, immaterial, and too remote.

By the COURT: Under the statement of counsel that he expects to make this testimony competent, and from the further fact being made to appear to the court that it is very important that this witness be permitted to leave this city and county this evening, and it now being within ten minutes of adjourning time, the court will permit this question to be answered, subject to the objection made by counsel for the plaintiffs, expressly reserving the right to take the testimony from the jury in case the court concludes that the testimony is not competent; to which the plaintiffs excepted.

A. Yes, sir; I assisted in taking the inventory. I will say that I assisted in taking the inventory, and the marks were removed
388 from the goods—the yards, the tickets, the cost. That is the two leading questions I believe in the question asked. I don't remember anything else.

Q. That was the Guthrie stock, Mr. Brooks?

A. Yes, sir; the Guthrie stock.

Q. Was that just a few days after the mortgagees had closed the store?

Objected to as incompetent, irrelevant, and immaterial. Sustained. Exception.

Q. How long was that, Mr. Brooks, after the mortgagees had closed the store approximately?

A. It was only a few days.

Q. Did you have occasion to make a close examination of the stock at that time?

A. I did; yes, sir.

Q. Now, what do you mean by the marks showing the yards and tickets?

Objected to as last above. Overruled. Exception.

A. The mortgagees were invoicing the stock—I suppose it was for the mortgagees—and I was employed to assist in invoicing the stock for the sheriff by the attachment creditors, and as they had got into the store first, why we rather expected them to do most of the work, and we wanted to take their yards—their measurement of the stuff—that would save us a great deal of labor in rolling the stuff up—but the boys refused to give us the yards or the cost, and I talked with one or two of them about it and they informed me (interrupted)——

Q. Well, these tickets showing the cost of the goods were removed, were they, or had been?

A. Yes, sir; the cost and yards.

Q. Well, were the tickets also removed from the rolls, or the stamps, which showed the makers or dealers in the goods?

Objected to as leading, suggestive, and same as to the other question; which objection was by the court sustained; to which defendant excepted.

389 Q. Well, you may state, Mr. Brooks, whether or not you found there on the goods the tickets or stamps or badges showing the dealers or makers of the various goods.

A. Yes, sir; tickets are usually on the outside or always on the outside of goods, and when the goods are broken open usually the tickets are taken off. The main tickets that I was interested in was the yards and the cost; we was invoicing the stock; they was the only ones. As to the makers, I don't remember anything of that kind—the makers or manufacturers. When you break a new piece of goods open to measure it you break the bands off, of course, as a natural consequence.

Q. How about those goods that hadn't been opened yet, the bands on them; had they been removed or were they there?

A. I don't think there was any bands or tickets left on the goods except where they were stamped on. On a good many pieces of dry goods on the name, stamp of the fabric, it is there found to stay.

Q. Now, Mr. Brooks, you say you had a conversation there with the agent or agents of the mortgagees——

Objected to as leading, suggestive, and assuming; which objection was by the court sustained. Exception.

Q. Well, with whom did you have any conversation there at the time the sheriff took possession, if anybody, in reference to the yards of this stuff?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. Yes, sir; I had a conversation; I don't remember just with whom, but some of the boys that were measuring the goods.

Q. Were some of the boys measuring the goods for the mortgagee?

Objected to as above. Sustained. Exception.

Q. Are you acquainted with W. L. Harvey?

A. I am; yes, sir.

390 Q. Now, was he there at the time, W. L. Harvey; this gentleman sitting over here—back here (pointing to Mr. Harvey)?

A. Yes, sir; I have got the two boys mixed. I believe he was; yes, sir.

Q. Did you have a conversation with him?

A. No, sir; I don't think I did.

Q. Was he present at the time this conversation took place that you referred to?

A. That I couldn't state; all that I remember of was remonstrating with the boys (interrupted)——

Latter part of answer stricken out. Exception.

Q. Will you please state that conversation, Mr. Brooks, that took place there at that time?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. I mean to ask you about the conversation you had with the parties there with whom you remonstrated about these cost-marks or tickets or in regard to these cost-marks.

Objected to as assuming. Sustained. Exception.

By Mr. OVERSTREET:

Q. What experience have you had in handling general stocks of merchandise, Mr. Brooks?

A. I have been in the business about twenty-five or six years; about twenty-six years since I went into business.

Q. What experience have you had in the Territory of Oklahoma in buying and selling entire general stocks of merchandise and estimating their marketable value here?

A. I have been buying stocks ever since I have been here whenever I get an opportunity to get anything cheap.

Q. When did you first get here and go into the mercantile business?

A. I arrived here April 23rd, 1889.

Q. Were you acquainted with the mercantile business in Oklahoma city?

A. No, sir.

391 Q. Do you know where Oklahoma city is?

A. Yes, sir; I do. I am acquainted with it now. Did you mean now?

Q. Are you now or were you in 1890?

A. No, sir; I was not down at Oklahoma city until 1892 or 1893.

Q. From your experience in the mercantile business and in handling stocks of merchandise and knowing the situation at Oklahoma city, would there be any material difference in the fair or market value of general stocks of merchandise there and here and other places where you were personally engaged in business?

Objected to as calling for an opinion of the witness as an expert and incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. What was your experience in the difference in the value of general stocks of merchandise here in the city of Guthrie in 1890 and elsewhere?

Objected to as last above. Sustained. Exception.

Q. Is there now any material difference or was there in 1890 or 1889 in the value of stocks of merchandise in Guthrie and within thirty miles of Guthrie?

Objected to as last above. Sustained. Exception.

Q. From your experience in handling merchandise what do you say would be the fair or market value of a stock of goods in Oklahoma Territory in 1890 and within thirty or thirty-five miles from this city that was composed of dry goods, boots and shoes, clothing, hats, caps, notions, wraps, gent's furnishing goods, thirty-five per cent. or more of which were old goods, and the goods at the time were in the hands of mortgagees and the business house closed, and the cost originally of the goods, with ten per cent. added for carriage, was between ten and eleven thousand dollars; what do you say would be the fair market value of such a stock of goods in that condition?

Objected to as no foundation laid, witness not competent, the
392 *the* hypothesis erroneously stated, and the whole is incompetent, irrelevant, and immaterial.

By the COURT: The attorney is directed to examine this witness, touching his competency to testify.

Q. From your experience in the mercantile business and handling various classes of goods would you know the fair value or the market value of a general stock of merchandise such as I have described, situated here in Guthrie or within thirty miles of Guthrie or in the city of Oklahoma city?

A. I think I would, sir.

Question objected to as calling for an opinion of the witness and incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. I know what I would give for it when I see it.

Q. Upon what do you base your judgment as to what you would give for stocks of goods under various circumstances?

Objected to as above. Sustained. Exception.

Q. What do you say a stock of goods located in Guthrie or Oklahoma city in the year 1890, in December, thirty-five per cent. of which is old goods, being a miscellaneous stock consisting of dry goods, hats, caps, boots and shoes, clothing, gent's furnishing goods, blankets, la*i*des' cloaks, the cost price originally of which would be ten or eleven thousand dollars, including ten per cent. added for

carriage—what, in your opinion, would be the fair or marketable value of those goods sold under a chattel mortgage where the parties had gone out of business and had ceased to do business?

Objected to, as no proper foundation is laid and incompetent, irrelevant, and immaterial, and the hypothesis stated in the question is erroneously stated and not proven; which objection was by the court overruled; to which plaintiffs excepted.

393 A. I would think that fifty cents on the dollar would be a fair price for that kind of a stock. I wouldn't give more. I wouldn't give more, if I knew it, on that kind of a stock.

Q. To what extent have you bought similar stocks of goods in this Territory in the last four years or since you have been in business here?

A. Well, from one to three stocks a year around over the Territory.

Q. You are generally acquainted with the value of such goods throughout the Territory?

A. Yes, sir.

Q. Do you remember of the fact of W. F. Wolfe & Sons or W. F. Wolfe & Son transacting business in the lower part of this building in November and December, 1890?

A. I do; yes, sir.

Q. During that time did you make any examination of their stock of goods so as to arrive at the value of the stock of goods? While they were in the business, I mean.

A. I do not remember that I did. I was in the store once or twice. I don't think I did; no, sir.

Q. Did you at any time in the month of December, 1890, make any examination of their stock of goods to arrive at the value?

Objected to because indefinite as to time. Sustained. Exception.

Q. I will ask you if at any time in December—I am going to arrive at the exact time after that. This is purely preliminary.

A. No, sir; I don't think I did, as I remember at this time.

Q. Did you at any time after that; and, if so, at what time?

A. Not until after they got into the difficulty.

Q. About what time was that?

A. I couldn't state the dates. I don't remember. It was along the latter part of the year.

Q. Do you know of the fact of their store being closed and their ceasing business there?

A. I do; yes, sir.

394 Q. How soon was it after that that you made the examination?

Objected to as incompetent, irrelevant, and immaterial and not within the issues in this case. Overruled. Exception.

A. It was within a few days. That is my recollection.

Q. What, in your opinion, from your knowledge of the value of

the goods and your examination of the stock of merchandise at that time, would its fair market value be, in the condition it was in?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Here defendant requests to be permitted to go into the question as to the value of the stock of goods at Guthrie at the time designated by the other questions, for the reason that the witness must leave the city of Guthrie and go to the city of El Reno, as he has informed counsel and the court, on the night train and cannot be present at the further trial of the cause, with the promise that we will get this testimony and make it material with other testimony in the case, otherwise that the court may rule it out; which request is by the court denied; to which defendant excepted.

Cross-examination by Mr. ELLIS:

Q. What is your true business?

A. Dry-goods and clothing business, boots, shoes, hats, and caps.

Q. Is it not a fact that you are engaged pretty largely in buying up stocks, making a sort of a specialty of that business?

A. Yes, sir.

Q. And naturally you try to buy them as cheaply as you can?

A. Yes, sir.

Q. And is it not a fact that, according to your ideas, that any stock of goods, when they are once out of the wholesale house and put onto the shelves, are worth less than they are in the wholesale stock?

A. Yes, sir.

Q. Even if they are all bran- new?

395 A. Yes, sir.

Q. Would it really happen when other Oklahoma merchants buys a stock of goods and ships it out here that it is worth less after buying it than it was before he bought it?

A. Yes, sir; that is right.

Q. And, in other words, any stock of goods bought at wholesale begins to depreciate as quick as it is bought?

A. As quick as it arrives in the store and it is opened up and the bands are broken off and it is opened for retail trade.

Q. Then it is worth less than it was in the wholesale house?

A. It is worth less to sell in the market; I don't know as it is worth any less for a man to stay there and retail it, but it is worth less in the market.

Q. That is, if you were going to buy it as one of these second-hand stocks you would not say that it was worth as much as a new stock?

A. Yes, sir.

Q. Now, then, if the goods are all new, from one to three months, and had been shipped into this town by a merchant and put into a store, and all kept in fine shape, as nicely as they could be kept, still you think there would be a depreciation of from twenty-five per cent. to forty or even fifty per cent., do you not?

A. Well, hardly; they would be worth perhaps twenty-five per cent. less—that is, if they were all new goods that had not been there but two or three months.

Q. Really they would not be shelf-worn at that time if they had been kept free from dust and clean, would they?

A. No, sir; perhaps not; they would not be shelf-worn.

Q. Is it not a fact, Mr. Brooks, that although you dealers in second-hand goods are pretty good fellows, that you kind of put the price down pretty low on your stocks of goods?

Objected to.

(Question withdrawn.)

396 Q. It is a fact, is it not, that men who deal in goods as you do do not pay the same price and do not expect to pay the same price for a stock of goods as men who buy into the business and start into the same in some town and expect to keep it up? Is that not a fact?

A. When I go to buy a stock of goods I try to find a fellow that is sick of the country, and I try to buy cheap.

Q. Now, is it not a fact that when a merchant goes in to buy another stock of goods or another merchant's stock the merchant who tried to buy the other out would not expect to get that stock of goods, as a rule, at the figures that you would expect to get it for a second-hand stock?

(Objected to and question withdrawn.)

Q. As a matter of fact, a merchant who sells his goods to somebody to take in some store usually gets a much better proportion for his stock of goods than he does if he sells to somebody to ship away as a racket stock, does he not?

A. Yes, sir.

Q. And you are basing your opinion upon this matter from what you are able to buy stocks at different times when parties are anxious to sell, and when you ship them away and put them up as a second-class stock and sell them, are you not?

A. Well, rather so; yes, sir.

Q. Really, take any individual article of goods, staple goods, and they would not depreciate fifty per cent. in any reasonable time?

A. In the real value, the usable value, they would not depreciate fifty per cent. when they have not been on the shalf but a short time, but they would to sell in bulk.

Q. That is, to sell in bulk to men who are engaged in that business?

A. Yes, sir; I suppose so. A person paying fifty per cent. on the stock would expect to make a profit.

Q. You are not in the business entirely for your health?

A. No, sir.

397 Redirect examination by Mr. OVERSTREET:

Q. Is there any difference between the market value of goods on the shelves of a wholesale house and the market value of a broken

and miscellaneous stock of goods on the shelves of the retail merchant that have laid there from one to three years?

A. Yes, sir; there is.

Q. That is a natural difference in the market value?

A. Yes, sir—that is, if they were to sell in bulk, at least.

Q. You cannot sell at retail an old stock of goods for the same price that you can a new stock which has just been gotten from the wholesale house, can you?

A. No, sir.

Q. Then, in giving your judgment and knowledge of the condition in the difference of values of goods, you mean the market value, owing to the different conditions of the goods, did you not?

A. I did; yes, sir.

Q. That is the universal market value, is it not, Mr. Brooks?

A. You mean fifty per cent. is universal?

Q. Yes, sir.

A. Yes, sir; that is enough to give for stocks. I buy them for less than that very often.

Q. Now, in this country, Mr. Brooks, a stock of goods opened up and placed upon the shelves and left there from one to two years, and with the new goods ordinarily bought to be figured up, they would never get dusty in this country, would they?

Objected to as not redirect examination; sustained; to which defendant excepted.

Q. Well, as a matter of fact, this country, on account of the dust, is very hard on goods, is it not, Mr. Brooks?

A. It is a hard climate on goods; yes, sir.

398 Recross-examination by Mr. ELLIS:

Q. A good deal of water on the ground affects the saleable value of goods, does it not?

A. We have got plenty of it now.

Q. And hard times affect the values of goods, do they not, to some extent?

A. Yes, sir.

Q. In your experience in selling second-hand stocks of goods, do they ever sell at retail or by any character of sale under a chattel mortgage for anything like what they are worth at wholesale?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. From your experience and observation about what per cent. of the original cost value do goods sell for when sold under a chattel mortgage, either at retail or in job lots or bulk sales?

Objected to as last above; which objection was by the court overruled; to which defendant excepted.

A. I don't know as I understand the question unless you read it. I understand some of it, but we don't usually sell goods under a chattel mortgage, or, at least, I do not or have not, at retail.

Q. Well, in the usual manner in which goods are sold under chattel mortgage?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. About what per cent. of the original cost value would a miscellaneous or general stock of goods, such as that heretofore described to you, sell for here or in Oklahoma city, where sold under a chattel mortgage without notice?

A. Would the stock bring at retail?

Q. I don't know; that was what the terms of this mortgage is, without notice, and I will put it thus: Any way that you might want to sell it to make it bring the most?

Objected to as several questions in one and incompetent,
399 irrelevant, and immaterial. (Question withdrawn.)

By Mr. OVERSTREET:

Q. Does the fact that a general stock of goods is known as what we call a bankrupt stock or a stock that is sold under a chattel mortgage affect its value in making a sale?

A. Yes, sir; it does.

Q. In what manner?

A. It depreciates the goods.

Q. To what extent, taking into consideration a stock such as I have described?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. Well, I think we can get about the cost of the goods, about the original cost; in these hurrah sales we usually use the cost for our selling mark. If we buy them cheap enough we take and sell the goods at cost.

Q. That is at retail sale?

A. Yes, sir; it saves a good deal of labor in remarking the goods; this is at retail I am speaking of now.

Q. About what expense is it to sell goods in that way?

A. About twelve and a half per cent.

Q. Does anything depend upon the skill and ability of the parties handling the goods?

A. I think so; yes, sir.

Q. That has considerable to do with it, has it not?

A. That would be only my judgment; I think so; yes, sir.

Q. About what would a miscellaneous stock of goods, such as I have described to you, sell for at a forced sale, chattel-mortgage sale, here without notice?

Objected to as incompetent, irrelevant, immaterial, and no proper foundation laid; which objection was by the court sustained; to which defendant excepted.

400 Q. What would such a stock of goods as I have described sell for under a forced sale, under a chattel-mortgage sale, at private sale without notice?

Objected to as to last preceeding question. Sustained. Exception.

Q. What would be the value of such a stock of goods under those circumstances and to be sold in that manner?

Same objection, ruling, and exception as last above.

By Mr. ELLIS: Does it not frequently happen that men who are good advertisers and put out a stock of goods and advertise a sale get a little—just a trifle of profit besides the cost price of the goods when they are selling and advertising that way?

A. Yes, sir; advertising is the way to get to do it.

Q. Sometimes get enough profit to pay the expenses and keep along?

A. Yes, sir.

Q. Mr. Brooks, really you have known people selling goods, advertising them for less than cost, for years that got rich, have you not?

A. Yes, sir.

Defendant moves to strike out the answer. Sustained. Exception.

Testimony of Louis E. Pitts.

LOUIS E. PITTS, being recalled as a witness for the defendant, testified as follows:

Direct examination by Mr. WISBY:

Q. What official position, if any, do you hold?

A. Clerk of the district court of Logan county, Oklahoma Territory.

Q. Who was your predecessor in office and holding the office of clerk of the district court of this county in 1890 and 1891?

A. T. G. Risley.

Q. I will get you to examine these papers and see if they are the files in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son, which is now pending in this court and was pending the latter part of December, 1890.

A. Yes, sir; these are the files; I don't know whether they
401 are all of them here or not.

Q. Well, those papers are files in that case?

A. Yes, sir.

The papers in this case are marked Exhibit 7.

Q. I will ask you to examine the papers in that file (handing witness papers) and see if those are the papers in the case of Burnham, Hanna, Munger & Co., which was pending in this court the latter part of December, 1890, and in June, 1891, against W. F. Wolfe & Son.

A. Yes, sir; these papers all belong to the files in that case, Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son.

Papers are marked Exhibit 8.

Q. I believe you identified this as a part of the files in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son (handing witness paper).

A. This seems to have E. S. Jaffray & Co. also included. I don't know; there are two of those cases that has both of the plaintiffs in.

Q. I would ask you to examine that and see if that is a part of the files in this case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son as well as the files in the case of Jaffray & Co. and other attaching creditors (handing witness Exhibit 3).

A. M. D. Wells & Co. and E. S. Jaffray & Co. are both included in that case as parties, but I don't really know which case it does belong to.

Q. That is one of the files in these attachment cases against Wolfe & Son?

A. Yes, sir; I would take it to be one of the cases.

Defendant now offers in evidence the complaint in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son, No. 361.

Objected to as incompetent, irrelevant, immaterial, no foundation laid; and we renew our objection that the writ of attachment in that case has been, by the action of this court in the case of E. S. Jaffray & Co. by virtue of the stipulation on file, an-
402 -ulled and discharged; which objection was by the court overruled. Exception.

Defendant reads said complaint in evidence.

Defendant now offers in evidence the attachment affidavit (page-378 & 274, this record) and undertaking in case No. 361, M. D. Wells & Co. *vs.* W. F. Wolfe & Son, as identified by the clerk.

Plaintiff- objects to the affidavit because a part of the debt is by the affidavit shown to have been due at that time and a part not due, and as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiff- excepted.

Defendant reads the attachment affidavit and undertaking in evidence (found at 379 & 380).

Defendant now offers a paper from the files of case No. 361, M. D. Wells & Co. *vs* W. F. Wolfe & Son, filed January 16, 1891, entitled Offer to confess judgment.

Objected to as incompetent, irrelevant, and immaterial: which objection was by the court sustained; to which defendant excepted.

Q. Mr. Pitts, have you the appearance docket of this court containing the entries in these cases?

A. Yes, sir.

Q. Have you the appearance docket, Mr. Clerk, showing the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son?

A. Yes, sir.

Q. Does that docket show when such suit was instituted in this court?

A. Yes, sir; December 17, 1890, is the date.

Q. Have you the appearance docket there of this court which shows when the suit referred to heretofore of Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son, case No. 396, was filed?

A. Yes, sir; I have it here.

Q. When was that case filed?

A. I have the *original docket entry, which shows that the* suit was instituted December 26th, 1890.

403 Defendant now offers in evidence the paper which is identified as one of the files of M. D. Wells & Co.; which said paper is marked Exhibit 9.

Objected to as to the paper offered just preceding this; which objection was by the court overruled; to which plaintiffs excepted. Counsel for defendant reads the paper in evidence (page 386).

Defendant now offers in evidence the writ of attachment and return of the sheriff as a part of the files in this case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son, case No. 361, in this court.

Plaintiff- renews the objections heretofore made to this paper; which objection- was by the court overruled. Exception.

Plaintiff- objects further because this is a single writ; that a part of the debt is due and a part of it is not due; which objection was by the court overruled. Exception.

Counsel for defendant reads the paper in evidence (found at p. 283 *et seq.*).

Plaintiffs object specifically to the inventory and appraisement attached to the sheriff's return as incompetent, irrelevant, and immaterial.

By the COURT: Gentlemen of the jury, the sheriff's return shows that a certain valuation was placed upon these goods, chattels, and property at the time the same were attached. The instrument cannot be regarded by you as evidence fixing the value of this property attached, but simply for the purpose of showing that the officer complied with the law in making his return, and that these goods were taken under lawful process; to which instruction of the court both parties object and except.

Plaintiffs here move to have the evidence of the writ of attachment and all proceedings based upon it stricken from the record, and the summons which was offered in evidence, as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiffs excepted.

404 Defendant here offers in evidence the amended complaint in case No. 398, Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son, identified by the clerk of this court as a part of the files of that case filed February 16th.

Objected to as incompetent, irrelevant, immaterial, and because filed in the case subsequent to the grievance complained of and the case brought for two separate debts, one of which was due and one of which was not due; which objection was by the court overruled; to which plaintiffs excepted.

Counsel for defendant reads paper in evidence. (See pp. 382 & 382*a*.)

Defendant now offers to read in evidence the amended affidavit in attachment in said case No. 398, being a paper identified among the files of said case No. 398, Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son, in this court.

Objected to as incompetent, irrelevant, and immaterial and as last above; which objection was by the court overruled; to which plaintiff- excepted.

Counsel for defendant reads paper in evidence. (See pp. 383 & 384.)

Defendant now offers in evidence the journal entry of judgment rendered in this case to show that the parties appeared to the case and consented that judgment be rendered on these pleadings and proceedings in the case of Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son.

Objected to as too remote, incompetent, irrelevant, immaterial, and not within the issues in this case; which objection was by the court sustained; to which defendants excepted.

Defendant now offers in evidence the records of this court, the judgment record of this court, in a case heretofore pending in said court, wherein Burnham, Hanna, Munger & Co. were plaintiffs and W. F. Wolfe & Son were defendants, as the same is found on Journal Number 3, page 435, of the records of the district court of Logan county, Oklahoma Territory.

405 Plaintiffs object for the same reasons contained in the objection to the journal entry; which objection was by the court sustained; to which defendant excepted (found at pp. 674 & '5).

Counsel for plaintiffs move that the papers and matters introduced in evidence heretofore concerning the case of Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son be stricken from the record for the reason that the same is incompetent, irrelevant, and immaterial, and not within the issues in this case; which motion was by the court overruled; to which the plaintiffs excepted.

Defendant now offers in evidence the order which was identified as the order of sale issued in the case of M. D. Wells & Co. and others, attaching creditors of W. F. Wolfe & Son on the stocks of goods both at Oklahoma city and at Guthrie, which order was identified by C. H. De Ford, sheriff of Oklahoma county, as the order which he received as sheriff of such county, and under which he sold the stock of goods at Oklahoma city and his return and costs thereon, as shown by the paper.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted. (See pp. 289, '90, '91.)

Defendant now offers in evidence the record at page 435 of Journal No. 3 of this court, the record of the judgment rendered in the case of Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son, for the purpose of showing the right of Burnham, Hanna, Munger & Co. to a part of the proceeds of the sale of the stocks at Oklahoma city, as they were creditors of W. F. Wolfe & Son.

Plaintiff- makes the same objection to the judgment record now offered specially for one purpose that they made to the judgment

record when offered a few minutes ago generally; which objection was by the court sustained; to which defendant excepted. (See pp. 674 & '5.)

Defendant now offers in evidence this paper, which was identified as a part of the files in case No. 398—Burnham, Hanna,
406 Munger & Co. *vs.* W. F. Wolfe & Son—purporting to be the answer of the defendants to that action, filed January 26, 1891, as shown by the files.

Objected to for the same reasons contained in the objection to the order of sale just offered in evidence; which objection was by the court overruled; to which plaintiff excepted. (See p. 385.)

Defendant now offers in evidence the journal entry of judgment on Journal Number Two of this court, at page 856, the same being the record of the judgment rendered in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son, dated April 2, 1891.

Objected to for the same reasons contained in last objection, and because the records of this court show that this judgment has been set aside at the request of the plaintiff, and that it is not now in force or in effect; which objection was by the court sustained and exception allowed (pp. 278 & '9).

The following are the papers identified by the witness Louis E. Pitts and just read in evidence by counsel for defendants:

407 In the District Court of Logan County, Oklahoma Territory.

MOSES D. WELLS, HENRY J. MCFARLAND, BRENTON R. WELLS, Partners as M. D. Wells & Co., Plaintiffs,
vs.
W. F. WOLFE & LEWIS H. WOLFE, Partners as W. F. Wolf & Co., Defendants.

Come the above-named plaintiffs and state that the above-named defendants are indebted to them in the sum of twenty-five hundred & $\frac{21}{100}$ dollars for goods, wares, and merchandise sold and delivered to defendants, eleven hundred & sixty & $\frac{70}{100}$ dollars now due and thirteen hundred and thirty-two & $\frac{14}{100}$ dollars to become due March 1, 1891; that said plaintiffs pray judgment for $2,500.21 debt, damages, and costs.

SEARS, CUNNINGHAM & WISBY.

TERRITORY OF OKLAHOMA, *County of Logan*, } *ss:*

Joseph Wisby, being duly sworn, deposes and says that he is one of the attorneys for the plaintiffs, who are absent from this Territory; that he has read the foregoing petition and knows the contents thereof, and that the same is true.

JOSEPH WISBY.

Subscribed and sworn to before me on this 17 day of December, 1890.

[SEAL.] T. G. RISLEY, *Clerk.*

408 TERRITORY OF OKLAHOMA, } ss:
Logan County, }

In the District Court of Logan County, Oklahoma Territory.

MOSES D. WELLS, HENRY J. MCFARLAND, and BRENTON R. Wells, Partners as M. D. Wells & Co., Plaintiff-,
vs.
W. F. WOLF & LEWIS H. WOLF, Partners as W. F. Wolf & Son, Defendants.

Joseph Wisby makes oath that he is one of the attorneys for the plaintiffs, who are now absent from this Territory, and that defendants are indebted to plaintiffs in the sum of eleven hundred and sixty and $\frac{70}{100}$ dollars, — of which is now due, and the further sum of thirteen hundred and thirty-two & $\frac{14}{100}$ dollars, to become due, the total debt being twenty-five hundred and $\frac{21}{100}$ dollars, for goods and merchandise sold to defendants upon open account; and the said Joseph Wisby also makes oath that said claim is just, and that plaintiffs ought, as he believe-, to recover thereon twenty-five hundred & $\frac{21}{100}$ dollars; he also makes oath that the defendants have sold, conveyed, and otherwise disposed of their property with the fraudulent intent to cheat or defraud their creditors or to hinder or delay them in the collection of their debts; that defendants fraudulently contracted the debt and incurred the obligation for which this suit is brought.

JOSEPH WISBY.

Subscribed in my presence and sworn to before me this 17th day of December, 1890.

T. G. RISLEY, *Clerk.*

TERRITORY OF OKLAHOMA, } ss:
Logan County, }

We bind ourselves to the defendant W. F. Wolf & Son that the plaintiff M. D. Wells & Co. shall pay to the said defendant the damages, not exceeding five thousand dollars, which said defendant shall sustain by reason of this attachment if the order be
409 wrongfully *tain by reason of this attachment if the order be wrongfully* obtained.

WM. H. McCLURE.
A. C. SCHNELL.

Endorsed on back: The plaintiff having made the affidavit for attachment required by law in cases of attachment before the debt is due, it is ordered by me that plaintiffs be permitted to attach the defendants W. F. *F.* Wolfe & Son in the sum of twenty-five hundred & $\frac{21}{100}$ dollars and fifty dollars more for the probable cost of the suit. E. B. Green, judge.

Endorsed: "Undertaking. District court. Doc. 1, No. 361, page 367. M. D. Wells & Co., plaintiff, *vs.* W. F. Wolfe & Son, defendant. Ex. Five."

Defendant offered and read in evidence the answer of defendant in case No. 381, which is in words and figures following, to wit:

410 In the District Court of Logan County, Oklahoma Territory.

MOSES D. WELLS, HENRY J. MCFARLAND, and Brenton R. Wells, Partners as M. D. Wells and Co., Plaintiffs,
vs.
W. F. WOLF and LOUIS H. WOLF, Partners as W. F. Wolf and Son, Defendants.
} General Denial.

Come now the above-named defendants, by their attorneys, Dille and Cunningham, and for answer to the plaintiffs' affidavit of attachment deny each and every material allegation therein contained.

DILLE & CUNNINGHAM,
Attorneys for Defendants.

Endorsed on the back: "County of Logan, Territory of Oklahoma. In district court. M. D. Wells & Co., pl'ffs, *v.* W. F. Wolf & Son, def'ts. Answer in attachment. Filed January 16, 1891. T. G. Risley, clerk. Dille & Cunningham, att'ys for def'ts."
Ex. 9.

411 In the District Court of Logan County, Oklahoma Territory.

JAMES K. BURNHAM, THOMAS K. HANNA, Albert H. Munger, Frederick C. Stoepel, Rice R. Miner, and Oscar L. Woodgate, Partners, Doing Business under the Firm Name and Style of Burnham, Hanna, Munger & Company, Plaintiff-,
vs.
WILLIAM F. WOLFE and LEWIS H. WOLFE, Partners, Doing Business under the Firm Name and Style of Wm. F. Wolfe & Son, Defendant-.
} Amended Complaint.

The plaintiffs for amended complaint herein, leave of court having been first obtained to file the same, for cause of action herein against said defendants allege that said plaintiffs, James K. Burnham, Thomas K. Hanna, Albert H. Munger, Frederick C. Stoepel, Rice R. Miner, and Oscar L. Woodgate, now are and at all times hereinafter mentioned were partners, doing business under the firm name and style of Burnham, Hanna, Munger & Company; that the defendants, William F. Wolfe and Lewis H. Wolfe, now are and at all times hereinafter mentioned were partners, doing business under the firm name and style of Wolfe & Son.

And plaintiffs aver that said defendants now are and at and prior to the commencement of this action, to wit, Dec. 26, 1890, were indebted to *this* plaintiff- in the sum of forty-seven hundred

ninety-nine dollars and seven cents ($4,799.07), with 7% interest per annum thereon from December 1st, 1890, for goods, wares, and merchandise sold and delivered by plaintiff- to defendants at defendants' special instance and request, an itemized account and statement of which said goods, wares, and merchandise is filed herewith, attached hereto, marked Exhibit "A," and made a part hereof; that said goods, wares, and merchandise were and are of the value aforesaid; that no part of said sum of money has ever been paid to plaintiffs by said defendants, and remains
412 and at the date of the commencement of this action was due from defendants to plaintiffs and wholly unpaid.

Wherefore plaintiffs demands judgment against said defendants and each of them for the said sum of forty-seven hundred ninety-nine dollars and seven cents ($4,799.07), with 7% interest per annum thereon from December 1st, 1890, for the costs of this action and for all other and proper relief.

S. L. OVERSTREET,
Att'ys for Plaintiffs.

TERRITORY OF OKLAHOMA, } ss:
Logan County, }

S. L. Overstreet, being duly sworn according to law, upon his oath says that he is attorney and agent for the plaintiffs in the above-entitled action; that said plaintiffs are non-residents of the Territory of Oklahoma and are now absent therefrom; that he has read the above and foregoing complaint and knows the contents thereof, and that the facts therein stated and set forth are true.

S. L. OVERSTREET.

TERRITORY OF OKLAHOMA, } ss:
Logan County, }

Subscribed and sworn to before me this 8th day of Feb., 1892.

T. H. CUPPAGE,
Notary Public.

Term exp. Jan., 1895.

Endorsed on back: No. 398. In the district court of Logan county, Oklahoma Ty. Burnham, Hanna, Munger & Co. *vs.* William F. Wolfe & Son. Amended complaint. Demand, $5,191.00. Filed Feb. 10, 1892. T. G. Risley, clerk dist. court. Overstreet & Decker, att'ys for plaintiff-.

413 In the District Court of Logan County, Oklahoma Territory.

JAMES K. BURNHAM, THOMAS K. HANNA, Albert H. Munger, Frederick C. Stoepel, Rice R. Miner, and Oscar L. Woodgate, Partners, Doing Business under the Firm Name and Style of Burnham, Hanna, Munger & Company, Plaintiff-,

vs.

WILLIAM F. WOLFE and LEWIS H. WOLFE, Partners, Doing Business under the Firm Name and Style of Wm. F. Wolfe & Son, Defendants.

} Amended Affidavit in Attachment.

TERRITORY OF OKLAHOMA, *Logan County,* } *ss:*

S. L. Overstreet, being duly sworn according to law, upon his oath deposes and says that he now is and at the time of the commencement of the above entitled action, to wit, Dec. 26th, 1890, was the agent and attorney for the plaintiff- in the above and foregoing entitled action; that plaintiffs commenced action in the above-entitled court against the above-named defendants to recover of and from said defendants the sum of forty-seven hundred ninety-nine dollars and seven cents, with 7% interest per annum thereon from the 1st day of December, 1890, for the value of goods, wares, and merchandise sold and delivered to said defendants by plaintiff- at said defendants' special instance and request; that said claim was and is just, and, as affiant believes, plaintiff- ought to recover thereon the sum of forty-seven hundred ninety-nine dollars and seven cents ($4,799 07), with 7% interest per annum thereon from the said 1st day of December, 1890; and affiant says that prior to the date of the commencement of this action, to wit, December 26th, 1890, said defendants had disposed of their property with the intent to defraud their creditors, and had converted their property subject to execution with the fraudulent intent to cheat, hinder, and delay their creditors, and that said debt was and is due for property ob-

414 tained under false pretences, and that said indebtedness was fraudulently incurred.

S. L. OVERSTREET.

TERRITORY OF OKLAHOMA, *Logan County,* } *ss:*

Subscribed and sworn to before me this 8th day of February, 1892.

T. H. CUPPAGE,
Notary Public.

[SEAL.]

Term exp. 2 Jan'y, 1895.

Endorsed on back: No. 398. In the district court of Logan county, Ok. Ty. Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son. Affidavit for att. Filed Feb. 10, 1892. T. G. Risley, clerk dist. court.

415 In the District Court of Logan County, Oklahoma Territory.

JAMES K. BURNHAM, THOMAS K. HANNA, ALBERT H. Munger, Frederic C. Stoepel, Rice R. Miner, and Oscar L. Woodgate, Partners, Doing Business under the Firm Name and Style of Burnham, Hanna, Munger & Company, Plaintiff-,
vs.
WILLIAM F. WOLFE and LEWIS H. WOLFE, Partners, Doing Business under the Firm Name and Style of Wm. F. Wolfe & Son, Defendants.

Answer. General Denial.

Come now the above-named defendants, by Dille and Cunningham, their attorneys, and for answer to the plaintiffs' complaint deny each and every material allegation therein contained.

DILLE & CUNNINGHAM,
Attorneys for Defendants.

Endorsed on back: In the dist. court, Logan county, Oklahoma Territory. Burnham, Hanna, Munger & Co., pl'ff-, *v.* Wm. F. Wolfe & Son, def'ts. Answer. Filed Jan. 26th, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy. Dille & Cunningham, att'ys for def'ts.

416 THE TERRITORY OF OKLAHOMA, *County of Logan.*

In District Court.

MOSES D. WELLS, HENRY J. McFARLAND, BRENTON R. Wells, Partners as M. D. Wells & Co., Plaintiffs,
vs.
WILLIAM F. WOLFE and LEWIS H. WOLFE, Partners as W. F. Wolfe & Co., Defendants.

Offer to Confess Judgment.

The above defendants hereby offer to allow the above-named plaintiffs to take judgment in the above cause in the sum of twenty-four hundred and eighty-nine & $\frac{31}{100}$ — and the costs of suit.

Witness our hands this 12th day of January, A. D. 1891.

HARPER S. CUNNINGHAM,
Att'y for W. F. Wolfe & Son.

I hereby acknowledge service of the above notice this 13th day of January, 1891.

CUNNINGHAM & WISBY,
Att'ys for Pl'ffs.

Endorsed on back: Logan county, Oklahoma Territory. In district court. M. D. Wells & Co., pl'ffs, *v.* W. F. Wolf & Son, def'ts. Offer to confess judgment. Filed January 16, 1891. T. G. Risley, clerk. Dille & Cunningham, att'ys for def'ts.

417 *Testimony of C. H. De Ford.*

C. H. De Ford, defendant, being recalled as a witness in his own behalf, testified as follows:

Direct examination by Mr. Wisby:

Q. At the time you were on the stand before you said, I believe, that you were sheriff of Oklahoma county in 1890 and 1891?
A. Yes, sir.
Q. And you sold the stock of goods belonging to W. F. Wolfe & Son at that place?

Objected to as incompetent, irrelevant, and immaterial, and long subsequent to the matters in issue in this case, and immaterial what disposition he made of the goods; which objection was by the court overruled; to which plaintiff excepted.

A. Yes, sir.
Q. I believe you also identified this as the inventory that you made under the order of attachment of that stock of goods (handing witness Exhibit 4)?
A. I did.
Q. Was that made under your supervision and direction?
A. It was.
Q. What experience, if any, have you had in the mercantile business?
A. I have had several years; fourteen or sixteen years in my life.
Q. Were you acquainted with the stock of goods that was inventoried there?
A. I was during the time I took the inventory.
Q. Was you acquainted with it before that time?
A. Only by passing by. I never looked into it.
Q. You had been in the store, had you?
A. I think I have.
Q. Now, what was that stock appraised at by you and your appraisers?

Objected to as not the best evidence and immaterial; which
418 objection was by the court overruled; to which defendant excepted.

Q. You assisted, you say, in taking the inventory of that stock?
A. I did. I was in and out while they were taking it.
Q. Were you acquainted with the value of a stock like that in Oklahoma city at the time you made this inventory?
A. I believe I was. I had a stock there myself about that time.
Q. And you say you had fourteen to sixteen years' experience in the mercantile business?
A. Yes, sir.
Q. I will ask you what the value of the stock was at the time you

took it, if you took possession of it by the writs of attachment or order of attachment.

Objected to as incompetent, irrelevant, and immaterial, and plaintiffs ask leave to cross-examine the witness as to his competency; which request is granted.

Cross-examination by Mr. ELLIS:

Q. Is it not a fact that you did not take any part in the appraisement?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception. After argument the court reverses his ruling. Exception.

Q. Is it not a fact that you did not take any part in the appraisement?

Objected to as above. Overruled. Exception.

A. I did not fix the values.

Q. Is it not a fact that your examination of the stock was only just general glancing at it, and that you trusted to others to go over the stock, enumerate it, and fix the price upon it?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

A. That is a fact. I swore in two appraisers and instructed them; swore them to make a true appraisement of the property.

419 Q. And you left it to them, did you not, Mr. De Ford, to make the valuation?

Objected to as to last question preceding. Sustained. Exception.

Re-examination by Mr. WISBY:

Q. I will ask you what the value of the stock was at the time you took it, if you took possession of it, by writs of attachment or orders of attachment.

Objected to as incompetent, irrelevant, and immaterial, and witness has shown himself incompetent; which objection was by the court overruled; to which plaintiff excepted.

The court directs counsel for defendant to ask the witness another question.

Q. Mr. De Ford, I would ask you at the time you took possession of it, as near as you can, to state the character and class of the goods.

A. At the time I made the attachment I passed through the stock of goods; looked at the various kinds of goods. That was what I would call a mixed stock of goods. It was quite a lot of what we call old goods, many goods that I would regard as being out of date, and some of the boots and shoes—I remember of seeing them—looked like they were dusty and old goods.

Q. How did they appear with reference to having been in stock a long or short while?

A. They looked like there was a good many old goods in the stock.

Q. Now, you may state to the court what, in your opinion, that stock was worth, the value of the stock at Oklahoma city, at the time you took possession of it.

Objected to because the witness has not shown himself competent; which objection was by the court overruled. Exception.

A. I should judge from the condition of those goods being closed up——

By the COURT: The court directs the witness to answer the question directly; to which ruling the defendant excepts, as the witness is proceeding to answer it in his own way.

420 A. They were worth about fifty or sixty cents on the dollar.

Plaintiff- moves to strike out the answer of the witness as indefinite; which motion was by the court overruled. Exception.

Q. Explain what you mean by fifty or sixty cents on the dollar.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. On the inventory that I taken in attachment.

Q. Do you know the amount of the inventory?

A. Yes, sir.

Q. Then, in your opinion, the goods would be worth fifty or sixty per cent. of that amount?

A. Yes, sir.

Q. About how much, then, would the stock be worth in dollars and cents at the market value at the time you took possession of it?

Objected to because the witness is incompetent, and incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiff- excepted.

A. Well, the maximum would be from 42 to 43 hundred dollars.

Q. You went into that store and took possession of the goods, did you?

A. I did.

Q. By what authority did you go there?

Objected to as not the best evidence and incompetent; which objection was by the court sustained. Exception.

Q. Did you take possession of the stock of goods or in any other way or manner or have anything to do with them except by virtue of the authority given you by the writs of attachment issued out of the district court in this county in the cases heretofore referred to in your evidence?

Objected to for the same reason as to the last question and leading and suggestive; which objection was by the court overruled; to which plaintiff- excepted.

A. My answer is I did not.

421 Q. How is your answer?

A. I did not take possession of those goods by any other means only by reason of the writs of attachment.

Q. You sold the goods, did you, Mr. De Ford, and disposed of them?

Objected to as immaterial and too remote and not within the issues in this case, and incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiff- excepted.

A. I did.

Q. Under what circumstances did you sell them?

A. Upon the order of sale issued from this court.

Plaintiffs move to strike out as not responsive to the question and a conclusion; which motion was by the court sustained. Exception.

Q. I will ask you if prior to the sale of the goods if you advertised them by notice of publication.

A. I did.

Q. I will ask you if this is the publication or notice of publication of the sale of that stock of goods.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiffs excepted.

A. It is; yes, sir.

Q. That was the notice and also the proof of publication, is it?

Objected to as last above. Sustained. Exception.

Q. What paper did you have that published in, Mr. De Ford?

A. In the Daily Journal, I believe.

Q. You may examine the paper there to refresh your recollection.

A. The Oklahoma Journal.

Defendant here offers in evidence this proof of publication and the notice. (See pp. 288 to 291.)

Q. That was the paper published in Oklahoma city, was it, in Okla. Co.?

A. Yes, sir.

422 Object to the offer as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. What length of time did you cause the notice which you have identified or the publication or advertisement of the sale be published in the paper named prior to the sale?

A. Let me see the paper; it has been a good while ago.

Plaintiff- objects to witness refreshing his memory from the paper. Overruled. Exception.

A. About fourteen or fifteen days.

Q. What day did you sell the goods? Refresh your mind from that memoranda.

A. On Wednesday, February 4, 1891.

Q. You say you had advertised them for fourteen days before that?

A. Yes, sir.

Q. Did you sell them at public sale?

A. Yes, sir.

Q. Do you know what they brought at that sale?

Objected to as incompetent, irrelevant, and immaterial and occurring long subsequent to the transaction; which objection was by the court overruled; to which plaintiff excepted.

A. Yes, sir.

Q. What did the goods bring, Mr. De Ford?

A. They brought thirty-seven hundred dollars.

Q. Mr. De Ford, I would ask you to state what would be the reasonable cost for carriage, for freightage, of those goods. What per cent. of the cost of a stock of goods like that would the freight or cost of carriage be from Topeka, Kansas City, Chicago, and wholesale points, St. Joseph?

A. Not over five per cent. from Chicago.

Q. You think five per cent. would cover the freight if they were all shipped from Chicago?

A. Yes, sir.

423 Q. You have shipped goods from these wholesale points to Oklahoma city and other places also for yourself, have you not?

A. Yes, sir.

Q. How many years have you occupied the position of sheriff of Oklahoma county?

A. My first term lasted from June 11 to the 23rd of February, I believe; June 11, 1890, to the 23rd of February, 1891. I was elected again last fall; took the office the first of December.

Q. How long have you held that office of sheriff before that?

A. Four years.

Q. Do you mean in Oklahoma?

A. No, sir; in Kansas.

Q. Mr. De Ford, I will ask you who was in that store when you took possession of it?

Objected to as not the best evidence; which objection was by the court sustained; to which defendant excepted.

Q. Was W. L. Harvey in possession?

A. He was.

Q. I will ask you after you had taken possession of those goods from that date until you sold them if W. F. Harvey or any of the plaintiffs in this case demanded the possession of the same.

Objected to as immaterial and incompetent; which objection was by the court sustained; to which defendant excepted.

Q. What was the condition of that building—that is, the store building in which the goods were located — at the time you first went to levy your writs of attachment as to its being open or closed?

A. My recollection is that it was closed or Mr. Harvey was standing in the door or on the outside of the door, I forget which; I think it was closed.

Q. How often did you go there before you got into the
424 house and levied the writs of attachment on the stock?

A. I don't remember how often; I went there several times is my recollection.

Q. About how many days did you have the writ before you served it?

A. I think I had some of them more than a week, about a week.

Q. How many days before the day that you served the writs did you notify Mr. Harvey or those in possession that you had the writs?

A. Well, I think my first visit there that I found out that there was a chattel mortgage on the stock, and I talked to Mr. Harvey about it, is my recollection.

Q. Did you notify him at the time that you had writs of attachment?

A. That is my recollection, that I told him that I had them.

Q. How long was that before you took possession of the stock?

A. I think it must have been a week or more.

Cross-examination by Mr. ELLIS:

Q. After talking with Mr. Harvey you notified the plaintiffs in those attachment actions that you wouldn't levy those writs until you had bonds of indemnity, didn't you?

Objected to as incompetent, irrelevant, and immaterial and not proper cross-examination and hearsay; which objection was by the court sustained; to which plaintiffs excepted.

Q. As a matter of fact, after you called upon Mr. Harvey and first talked with Mr. Harvey about the chattel mortgage on there, you delayed your levy upon the stock, but not on account of your being able to get in there, did you?

Objected to as last above; which objection was by the court overruled. Exception.

A. No; not particularly.

Q. As a matter of fact, you could have got in—you knew that you could get in as well the first day as you could the last day?

425 Objected to as incompetent, irrelevant, and immaterial, and not proper cross-examination; which objection was by the court overruled; to which defendant excepted.

A. Yes, sir; I could have gone in.

Q. Now, I will ask the direct question if it is not a fact that Burnham, Hanna, Munger & Co. gave you before you levied the attach-

ment what you regarded and still regard as a first-class bond of indemnity to indemnify you against all damages in this case.

Objected to as last above, and as not the best evidence, and as asking the witness for a conclusion; which objection was by the court overruled; to which defendant excepted.

A. They gave me a bond.

Q. Is it not a fact that M. D. Wells & Co. gave you a bond of indemnity before you levied the attachment in that case?

Objected to as incompetent, irrelevant, and immaterial, and not the best evidence, and not proper cross-examination. Overruled; excepted to.

A. Yes, sir.

Q. Now, who bought this stock of goods when it was finally sold by you at this sale? I will refresh your memory, Mr. Sheriff, didn't Burnham, Hanna, Munger & Co. buy it?

A. That is my recollection. I just want to be positive about it.

Q. Now, Burnham, Hanna, Munger & Co. bought it, didn't they?

A. Yes, sir.

Q. Didn't W. J. Milligan buy it?

A. Yes, sir; it was Milligan instead of Burnham, Hanna, Munger & Co.

Q. He was their agent, was he not?

Objected to as incompetent, irrelevant, immaterial to the competency of the witness. (Question withdrawn.)

Q. You knew generally that W. J. Milligan was here representing Burnham, Hanna, Munger & Co. or was their agent?

Objected to as last above; which objection was by the court overruled; to which defendant excepted.

426 A. Only from hearsay, not from any official capacity he acted in.

Q. As a matter of fact, were you not paid by a check from Burnham, Hanna, Munger & Co. or by their agent?

Objected to as incompetent, irrelevant, and immaterial *and* to the competency of the witness, and not the best evidence; which objection was by the court overruled; to which plaintiffs excepted.

A. I don't remember who made the check or who it was from.

Q. This firm of Burnham, Hanna, Munger & Co. live at Kansas City, Missouri, don't they?

Objected to as above. Overruled. Exception.

A. That is my information.

Q. Mr. Sheriff, was not Mr. Milligan there—I ask this question to refresh your memory—and didn't he go through the stock for Burnham, Hanna, Munger & Co. that they had sold for the purpose of taking certain goods in replevin?

Objected to as incompetent, irrelevant, immaterial to the compe-

tency of the witness, and not proper as a matter of law, and asking the witness for a conclusion; which objection was by the court overruled. Exception.

A. That was before I got possession of the stock of goods.
Q. That was before, and you don't remember about that?
A. Yes, sir; I don't remember anything about that.
Q. Now, Mr. Sheriff, how were these goods offered for sale? State to the jury what was done.

Objected to as last above. Overruled. Exception.

A. The goods were first offered in lots—in small quantities, job lots.
Q. Now, just explain to the jury what you mean by lots; explain it so they will understand it.
A. A certain class of goods; for instance, boots and shoes, and hats and caps, and so on; they were offered in job lots, and then they was put up as a whole.
427 Q. I think I understand you, but I wish you would be a little more specific for the jury. About how many boots and shoes were there in one lot?
A. I cannot—it has been so long ago I cannot approximate. I have told you as near as I remember now.
Q. Now, did you offer all the boots and shoes in one job lot then? Is that your recollection?
A. My recollection is that the goods — offered in that way.
Q. That is to say, first you offered the boots and shoes in one lot. Is that right?
A. Yes, sir.
Q. Then you offered the hats and caps, for instance, and nobody bought them or bid upon them. Is that right?
A. I don't remember exactly how it was, but that usually is the way goods are sold when you offer them in lots.
Q. Then you offered as a job all the clothing there, didn't you?
A. I don't know. I don't remember. I presume so.
Q. Then you offered the dry goods in a lot, didn't you?
A. Yes, sir.
Q. And then there were groceries there, were there not?
A. I don't think there was any groceries in the stock.
Q. You offered the notions, too, didn't you, in a lot?
A. I don't remember how all the offering was continued.
Q. Then nobody bid upon either lot, did they?
A. I think not.
Q. As a matter of fact, did you ever have any bid there, except the bid from Burnham, Hanna, Munger & Co. or from Mr. Milligan?
A. I don't remember.
Q. Refresh your memory, if you can, Sheriff, and tell the jury whether that was not the only bid that you had there for
428 that stock of goods, and that was a bid in gross for all the goods together.

A. I don't remember now who bid on the goods; there were a good many there, but I don't remember who was there; it has been a good while ago, and it is a pretty hard matter for me to refresh my memory now as to who was there.

Q. You cannot say that there was any other bid made, can you?

A. No, sir; I cannot say. I have no recollection. I know they were sold to the highest and best bidder.

Q. Not referring now at all to the time of the sale, but referring now to your original entry in that store, as a matter of law, under what writ of attachment—what writ did you first levy upon that stock of goods, if either of them that have been offered in evidence?

Objected to as immaterial and incompetent and irrelevant; which objection was by the court overruled. Exception.

A. My return shows there which was levied first on the stock of goods. I don't remember; it was either M. D. Wells & Co. or Burnham, Hanna, Munger & Co., one of those, I don't know which.

Q. You say your return shows?

A. Yes, sir; my return shows that.

Q. You levied in the order in which you received the writs, didn't you?

A. I think I did; that was the law as I understand it.

Redirect examination by Mr. WISBY:

Q. Mr. De Ford, the notice of sale says in what order the goods will be sold. Were they sold according to that advertisement?

A. Yes, sir; they were.

Q. Now, to refresh your recollection, I would ask you if there was not a bid on every class, and if after you received all these separate bids from the various parties who were bidding on each particular class, then you did not put them up as a whole and sell them as a whole because they brought more than they did in the job lots.

429 A. If you remember, I was not positive about that in my testimony. It is usually the custom when you offer (interrupted)——

Well, I don't remember how the boots were, but I know that I sold them in bulk for more than any bids on the separate amounts amounted.

Q. You don't know whether Mr. Milligan was the agent of Burnham, Hanna, Munger & Co. or not?

A. No, sir.

Q. You don't know whether he acted as agent in buying these goods?

A. No, sir.

Q. Your remembrance is that they were sold to W. J. Milligan?

A. Since thinking about it, I remember that after the goods were sold that Mr. Milligan told me that he bought them on his own account. I remember that distinctly, but I don't remember how the check was given.

Q. What disposition did you make of the proceeds of sale?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Plaintiff moves to strike out the answer of the witness to the last question as hearsay and incompetent. Overruled. Exception.

Q. I will ask you if you did not return the proceeds of the sale of the stock to the district court of this county in accordance with the directions of the order of sale.

Objected to as to last question; which objection was by the court sustained; to which defendant excepted.

Testimony of Louis E. Pitts.

LOUIS E. PITTS, being recalled as a witness for the defendant, testified as follows:

By Mr. WISBY:

Q. I wish you would turn and find the record of an order directing the money that was derived from the sale of this stock to be turned over to the clerk in the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son, dated some time in February or March, 1891.

430 A. Perhaps you had better have Mr. Hornor look that up; I think he can find it more readily than I.

Testimony of Russell Briggs.

RUSSELL BRIGGS, being called as a witness for the defendant and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. OVERSTREET:

Q. State your name, age, and place of residence.

A. Russell Briggs; 39 years; Guthrie.

Q. Do you know—how long have you resided here and in the Territory?

A. Resided in the Territory nearly six years.

Q. Do you know of the fact that in the fall of 1890 the firm of the style of W. F. Wolfe & Son transacting a general mercantile business in this city and who also had a stock at Oklahoma city?

A. There was a firm of that kind; I don't remember the firm name.

Q. Did you have occasion to go into the Oklahoma City stock of goods in this action—that is, the action against C. H. De Ford for seizing the stock of goods at Oklahoma city known as the W. F. Wolfe & Son business?

A. I was in the store; yes, sir.

Q. About what time?

A. It was in December, 1890, I think.

Q. For what purpose did you go into that stock of goods; what was the occasion of it?

A. I was one of the appraisers for a part of the stock.

Q. What was the character of the stock of goods as to quality?

A. You mean the character of the general stock?

Q. What kind of goods, the general stock; yes, sir.

A. Well, it was a general store of dry goods, boots and shoes, hats and caps, etc.

Q. Had you had any experience previous to that time in the mercantile business?

431 A. I had.

Q. To what extent?

A. Well, I had been in the dry-goods business for about three years; I had been in the boot and shoe business seven years.

Q. What did you do there in relation to that stock?

A. We appraised a part of the goods for Burnham, Hanna, Munger & Co. under the direction of Mr. Milligan, I believe it was.

Q. What was the character of the stock of goods as to being a new or an old stock or fresh or old goods, taking it in general?

A. I think a part of them were fresh goods and some of it was old.

Q. In making your appraisement in the examination of the goods what was their character as to being marked with cost-marks, block-marks, and everything of that kind?

A. A part of them that we appraised had Burnham, Hanna, Munger & Co.'s mark on them with their cost-mark, and some of them had the mark of the Wolfe Company on them, and others had no mark at all, no brand of any kind.

Q. To what extent were the goods that had no marks or brands on them there—what proportion of the goods had no marks upon them?

A. I could not answer that, but I would think nearly half of them, possibly not over a third.

Q. Did you about the same time have an occasion to go into and examine the stock of goods here in Guthrie known as the Wolfe stock, located in this building on one of the lower floors?

A. I did. I was acting in the same capacity.

Q. About what date did you go into that stock?

A. I think it was just prior to the Oklahoma City stock.

Q. What was the character of that stock of goods?

Objected to as incompetent, irrelevant, and immaterial, and not within the issues in this case; which objection was by the court sustained; to which defendant excepted.

432 Q. What was the condition of that stock of goods as to having cost-marks and brands upon the goods?

Objected to as to last preceding question; which objection was by the court sustained. Exception.

Q. Is it not a fact, Mr. Briggs, that in this stock of goods at Guthrie, that the marks, cost-marks, selling marks, and the brands, were all or the greater portion of them destroyed, so that the goods were very difficult to be recognized?

Objected to as last above. Sustained. Exception.

Here defendant offers to make a statement in the record of what he desires to prove by this witness, the full condition of the Wolfe stock of goods at Guthrie mentioned in the mortgage as introduced in evidence in this case and mentioned in the defendant's answer, showing the full condition and character of the Guthrie stock of goods between the 15th and 20th days of December, 1890; which request is by the court denied for the reason that the same is incompetent. Exception.

Cross-examination by Mr. ELLIS:

Q. Mr. Briggs, you just appraised down there in that stock the goods that were taken out of there upon the writ of replevin for Burnham, Hanna, Munger & Co., didn't you, at Oklahoma city?

A. We appraised what was pointed out to us as Burnham, Hanna, Munger & Co.'s goods.

Q. By Mr. Milligan?

A. By Mr. Milligan and another representative from their house.

Q. Another representative—Mr. Milligan was acting for Burnham, Hanna, Munger & Co., was he not?

A. I presume so.

Q. And whatever they pointed out to you you examined and appraised?

A. Yes, sir.

433 *Testimony of H. F. Ardery.*

H. F. ARDERY, being called as a witness for defendant and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. OVERSTREET:

Q. Where do you reside, Mr. Ardery?

A. Here in Guthrie.

Q. Where were you residing in the month of December, 1890, and in January, 1891?

A. In Guthrie.

Q. Do you know of the fact at that time of a firm of the name or style of W. F. Wolfe & Son doing a general mercantile business in the lower floor of this building in Guthrie, and also having a stock of goods in Oklahoma city?

A. Yes, sir.

Q. Did you go into that Oklahoma City stock of goods in the month of December for the purpose of examining it or any of the goods?

A. I went in for the purpose of appraising some goods.

Q. About what time was that?

A. Well, I don't remember; it was along about the latter part of December some time, in the year 1890.

Q. What was the general character of the stock of goods at that time?

A. Well, it was a general dry-goods stock, boots, shoes, hats, caps, and clothing and dry goods.

Q. What was the nature of the goods as to being new or old or in good or poor condition?

A. Well, there were some goods there that were in a nice condition, and some pretty old goods there, considerably shelf-worn.

Q. What was the condition of the goods examined by you as to being marked or not? Explain fully.

434 A. The stock-marks were part of them gone and we had some trouble in finding the goods that was named in the writ of replevin.

Q. You went there as an appraiser under the writ of replevin?

A. Yes, sir.

Q. In whose hands was the writ?

A. In the hands of Ransom Payne.

Q. Did you about the same time have occasion to go into the Guthrie stock which I described?

A. Yes, sir; we had been in there just before we went to Oklahoma city.

Q. How long were you in that stock, making an examination there?

A. I don't remember. I think we were about a week.

Q. In that time did you observe the general character of the stock and its condition?

Objected to as incompetent, irrelevant, and immaterial and not within the issues in this case and no proper foundation laid; which objection was by the court sustained. Exception.

Here defendant offers to prove by the witness H. F. Ardery that he made a thorough examination of the Guthrie stock of goods mentioned in the mortgage introduced in evidence in this case; that the examination was made between the 15th and 20th of December, 1890, and offers to prove by this witness the full condition, quantity, and quality of the stock, its character and its value; which request is by the court denied; to which defendant excepted.

Cross-examination by Mr. ELLIS:

Q. The goods that Mr. Milligan wanted out of there, didn't they have you appraise the goods that he wanted?

A. The goods were selected by Mr. Milligan and others.

Q. What others?

A. There was a gentleman whose name I never learned—that is, if I did learn it I have forgotten it.

Q. They were both representatives of Burnham, Hanna, Munger & Co., were they not, acting for them?

435 A. I think so.

Q. As a matter of fact, they took pieces of goods there that didn't have their names—the names of their firm—on them, didn't they—Burnham, Hanna, Munger & Co.'s cost-mark on them—that didn't have anything to distinguish them from any other goods in the store? Is that not true?

Objected to as incompetent; which objection was by the court overruled; to which defendant excepted.

A. I don't know. We appraised such goods as they laid out for us to appraise.

Q. And they laid out some goods that didn't have any marks on them, didn't they?

A. Yes, sir.

Q. That didn't have anything that you could distinguish them by at all?

A. Yes, sir.

Redirect examination by Mr. OVERSTREET:

Q. That was by reason of the marks and brands having been destroyed recently before, was it not?

Objected to as calling for a conclusion and incompetent and not proper redirect; which objection was by the court overruled; to which plaintiffs excepted.

A. Yes, sir.

Q. These parties who identified the goods and laid them out were parties that were familiar with Burnham, Hanna, Munger & Co.'s goods, were they not, and could identify them without the cost-mark?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. Don't you know as a fact that Mr. Payne, as the officer with a writ of replevin, and you and the other appraisers being unable, on account of the marks being destroyed on these goods, to identify them according to the description in the writ of re-
436 plevin, that an expert from the house of Burnham, Hanna, Munger & Co. was brought here for the purpose of identifying those goods, and that was the parties, whose names you do not remember, who laid out their goods?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. And don't you know that by reason of the fact that the marks by which these goods could be designated as described in the bills and in the writs of replevin having been destroyed that it became necessary to send to Burnham, Hanna, Munger & Co.'s wholesale house for a man to come here to identify those goods, and was not that the man, whose name you do not know, who identified the goods and laid them out for you to appraise?

Objected to as last above; which objection was by the court sustained. Exception.

Q. When you went into this stock of goods or these two stocks who had charge of them before you took charge of them?

Objected to as incompetent; which objection was by the court sustained. Exception.

Q. Who did you find with the stock of goods at Oklahoma city when you went in there with the officer to appraise these goods?

A. Mr. Will Harvey seemed to be in charge down there, and I think likely that the sheriff was having an appraisement made of the stock of goods, too, at the same time.

Plaintiffs move to strike out the last statement as incompetent, irrelevant, and immaterial. Sustained. Exception.

Recross-examination by Mr. ELLIS:

Q. In one of your answers, Mr. Ardery, you stated that you appraised goods there which had no marks upon them because the marks upon those goods had been recently destroyed. Did you see the marks on those particular goods destroyed?

A. I don't think I testified to that.

437 Q. Yes; you did. I thought you did not notice the question. It is in the question and not in your answer.

A. I didn't notice the word recently being in there.

Q. And you don't know when the marks were destroyed or anything about it?

A. No, sir.

Q. And you were not intending to insinuate that it has been done for any improper purpose—you did not know anything about it, did you?

A. No, sir.

Testimony of S. L. Overstreet.

S. L. OVERSTREET, being called as a witness for the defendant and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. WISBY:

Q. You are one of the attorneys for the defendant in this case?

A. I am.

Q. Were you present at Oklahoma city at the time the sale of the Wolfe stock of goods took place, as related by Mr. De Ford, the sheriff of the county?

A. I was present.

Q. I would ask you to state how that sale was conducted—the manner of conducting the sale.

A. The announcement was made by the officer who sold the goods that he would first offer the various lots or classes—that is, boots and shoes, clothing by themselves, and the dry goods in a different lot—and would receive bids by lots, and then he would offer in bulk and in whatever way they brought the most money they would be stricken off, and they were offered that way and sold in that manner.

Q. In job lots?

A. They were not sold in job lots. They were sold on the bulk sale.

Q. They were sold subject to the fact as to whether they would bring more as a whole than they would in job lots?

438 A. Yes, sir; that was the way the offer was made and the way the sale was made.

Q. There were bids on each class or stock, was there? Go ahead and state more fully.

A. There were a number of bidders there, and there was a bid made on each separate lot as it was offered. I don't know whether there was more than one made or not on lots, but there were bids on every lot, and then those bids were footed up and I don't remember what they aggregated, but the officer selling them asked for bids upon the entire stock, and there were bids on it, and it aggregated more than the aggregate of the bids on the job lots and it was stricken off.

Q. I will ask you to state if there was more than one bidder on that, on the whole or in job lots, either.

A. I really don't remember whether there was or not. There was more than one bidder upon the various lots, but whether there was more than one bidder on the entire lot I don't know.

Q. I will ask you if there was not several merchants there who lived in Oklahoma city who bid on this stock.

A. There were men there who claimed to be merchants. There were a number there who were examining the stock of goods and making their estimates and who bid on them. I don't know whether they were Oklahoma City merchants or not personally.

Q. I will ask you, to refresh your recollection, if you saw Mr. Milligan buy the goods.

A. Mr. J. W. Milligan bought the goods.

Q. Now, I will ask you, to refresh your recollection, if his highest bid at which the goods were knocked off to him was not only a few dollars more than the other bid or bids of other persons present.

A. I cannot remember the difference, but I think it was within one hundred dollars or such a matter over and above the job-lot bids.

439 Q. Was it not within twenty-five dollars?

A. On the job-lot bids?

Q. No, sir; of the whole bids. Probably you did not understand my question. I asked you if there were not other bidders on the goods, as a whole, and Mr. Milligan's bid of $3,700, or whatever sum he bought the goods at, at which they were knocked down to him at, if there were not other bids or another bid right close to that amount by other parties.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. I don't say that there were other bids. I simply say that my memory is not clear on that subject.

Q. I will ask you if a merchant by the name of Turk, Herman

Turk, did not bid on them, and also another merchant by the name of—I can't think of his name, from St. Joe.

A. I remember those parties being there by the name and represented to be from those places, but personally I don't know and didn't know then that they really belonged to those places and were the men that they said they were.

Q. Do you remember there was a man that bid on them?

A. I remember that there was a man that claimed to be from St. Joseph that bid on those goods; also I remember the name of Turk now since you speak about it.

Q. Do you remember the names of any one that bid upon the stock as a whole?

A. No, sir; I do not.

Q. Do you remember the hats and caps were offered specially and everything was first separately offered in job lots?

A. I remember that all the different classes of goods were offered separately.

Q. Now, how did the aggregate bid, the bid that bought the goods, the price that bought the goods as a whole—how did that compare with the aggregate of the job-lot bids?

440 A. My recollection is that it was something in the neighborhood of a hundred dollars or more; it may have been more than that. I have not a very distinct recollection as to the difference between the job-lot bids and the aggregate bid, but I don't think that there was very much difference.

Cross-examination by Mr. ELLIS:

Q. You were there for Burnham, Hanna, Munger & Co., were you not, Mr. Overstreet?

A. I was.

Q. You went there with Mr. Milligan?

A. I don't recollect. I don't remember that I went there with him. He was there and I was there.

Q. And Milligan was representing Burnham, Hanna, Munger & Co.?

A. Yes, sir.

Q. And when these goods were finally bought and they were paid for, do you know how they were paid for?

A. I don't know just exactly how. I have an opinion about it, but I do not like to give my opinion. I don't personally know.

Q. Didn't Milligan say at that time that if they finally got beat they would have the goods anyway, and didn't you frequently state that yourself that they had got the goods?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which plaintiff excepted.

Q. Didn't Milligan say to you then before he went down there that he wanted to buy those goods cheap, so that if he finally did get beat he would have the stuff to pay out with?

A. No, sir; he didn't consider that he bought the goods cheap at all. He paid all they was worth, that was what he said to me.

Q. Mr. Overstreet, will you testify that anybody made a separate bid on these different classes except Milligan?

A. Yes, sir.

441 *A. Yes, sir.*

Q. Who did?

A. I don't know the men personally, but there were bidders there that bid on these various classes. My recollection is that Mr. Milligan did not bid on the classes; probably he may have bid upon the dry goods, but as it is my recollection is that he did not bid on the classes.

Q. As a matter of fact, Mr. Overstreet, you know that these goods were bought for Burnham, Hanna, Munger & Co.?

Objected to as incompetent, irrelevant, immaterial, and to the competency of the witness; which objection was by the court overruled; to which defendant excepted.

A. I couldn't say that I know it as a matter of fact; I have an opinion about it.

Q. Now, you had correspondence with them with reference to the goods since they got them—have since they took them?

A. Yes, sir; I have.

Q. Is it not a fact that in that way that you know well enough in your own mind that they bought those goods and had Milligan there to bid them in for them?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which plaintiffs excepted.

Q. You know, don't you, that Milligan had been in the habit of buying stocks for Burnham, Hanna, Munger & Co. in different places—that is, buying them in his own name, but buying them really for the company?

Objected to as incompetent, irrelevant, and immaterial, and not proper cross-examination; which objection was by the court sustained; to which plaintiffs excepted.

Q. Is it not the business policy of Burnham, Hanna, Munger & Co. to buy up stocks like this one in cases where they are interested?

Objected to as last above. Sustained. Exception.

442 Q. Is Mr. Milligan not an adjuster, and is not that his line of business for the firm?

Objected to as to last preceding question. Sustained. Exception.

Redirect examination by Mr. WISBY:

Q. Mr. Ellis asked you about conversations you had with Mr. Milligan with reference to buying those goods and in which you made some remark about the price. I will ask you to state if Mr. Milligan did not say that he had paid the last dollar that the goods were worth, and he would not have given any more for them.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Testimony of Joseph Wisby.

JOSEPH WISBY, being called as a witness for the defendant and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. COTTERAL:

Q. State your name, occupation, and residence.

A. Joseph Wisby; Guthrie; lawyer.

Q. Did you ever see the stock of goods known as the W. F. Wolfe & Son stock at Oklahoma city, in the latter part of 1890 or fore part of 1891?

A. Yes, sir; I was there and saw it in the fore part of 1891.

Q. What was the occasion of your seeing that stock at that time and what was transpiring, if you recollect?

A. I went down there on or about the day the goods were advertised for sale. I was there on that day, and probably one evening before; I don't remember for certain.

Q. You refer to the sheriff's sale?

A. Yes, sir; they were sold by the sheriff or undersheriff or some officer of that kind.

443 Q. Were you present at the time the goods were offered for sale?

A. Yes, sir.

Q. You may describe the plan followed in that sale. What took place, as you recollect it?

A. The goods were offered in classes, or job lots, as it is termed, separately; each lot of goods of a separate class was offered for sale and sold.

Q. And sold?

A. Yes, sir—that is, bid in by parties; it was sold subject—they were sold in job lots, subject to a resale of the whole amount, and if the goods had brought more in job lots they were sold to the people buying the job lots. Each one would get the lot that he had bid in—the job lot that he had bought in. That is what I mean when I say that the boots and shoes were sold separately, hats and caps separately, and the clothing, gents' furnishing goods, and clothing, was sold in one job lot, and so on in the different classes in job lots, and there were bids—I don't remember the aggregate bid, but there were bids on each lot, and each lot was stricken off to some bidder. I bid on it myself a few times, I think. I bid at least twenty-six or seven hundred dollars on it, and probably more, and there were other firms there; I don't remember who they were; some from abroad—outside of the Territory—and some from Oklahoma city, and they bid on the different job lots, and also they bid on the whole stock when it was offered for sale, and Mr. Milligan's bid was the highest bid and the stock was sold to him.

It was found after adding up the separate bids on the job lots that the bid of Mr. Milligan for the whole stock was more than the aggregate amount of the whole lot of job-lot bids and the goods were declared sold to him.

Q. Was the sale made at public sale there?

A. Public outcry, under the terms of a notice that they had
444 there. The bids were made at public auction—outcry by an officer—and under the terms of the notice and order that he claimed to be acting under there——

Plaintiff moves to strike out what he has said with reference to the notice; which motion was by the court sustained, defendant excepting.

Q. Well, did you say there were a number of bidders there?

A. Yes, sir. He asked me how they were sold—at public auction. I did not mean to answer anything that I was not asked.

Q. Were there a number of bidders there?

A. Yes, sir; there was quite a number of bidders—that is, there was several; there was more than two or three; I didn't know them.

Q. Do you remember the amount realized at that sale?

A. Well, I think the goods were struck off for about $3,700.

Cross-examination by Mr. ELLIS:

Q. You say you was there bidding?

A. Yes, sir; I made one or two bids; probably more. Probably I bid on some of the job lots; I am not sure, but I don't think I bid on the job lots at all.

Q. You were engaged in that line of business at that time, were you?

A. Yes, sir; just at that particular time I was.

Q. As a matter of fact, were you not down there representing M. D. Wells & Co.?

A. Yes, sir.

Q. The attaching creditors?

A. Yes, sir.

Q. And is it not a fact that all the interest you had in it was that you wanted those goods to go for more than their claim?

Objected to as immaterial; which objection was by the court sustained. Exception.

Q. Is it not a fact that all you did bid for was just enough
445 to make those goods go for more than M. D. Wells & Co.'s claim?

Objected to as immaterial and incompetent; which objection was by the court sustained; to which plaintiff excepted.

Q. You bid twenty-six or twenty-seven hundred dollars, did you?

A. I am satisfied I bid that much, and I don't remember now how much more.

Q. M. D. Wells & Co.'s debt was $2,500?

A. Yes, sir.

Q. The cost was in the neighborhood of $150 to $200?

A. Probably that; yes, sir.

Q. And when the amount got above M. D. Wells & Co.'s claim you quit bidding, and you did not bid any more, did you?

A. I don't hardly think I bid very much more than that.

Q. After you got through bidding there, who was there that bid between 27 and 37 hundred dollars?

A. Well, some of these other parties there bid; that is my recollection; some of the other parties who were bidding.

Q. Who were they?

A. I wouldn't say who they were; there was one or two gentlemen bidding there—my recollection is that they bid probably twenty-five hundred dollars—I mean within twenty-five dollars of what Mr. Milligan's bid was. Somebody did that, but I don't call to mind now the amount that he bid.

Q. Now, were any of these lots struck off to anybody that lived at Oklahoma city—separate lots?

A. Now I cannot remember that, but they were all struck off to somebody, subject to the final sale.

Q. Were not two or three of those lots struck off to you?

A. I don't remember that now; I don't remember for sure that I bid on the job lots.

Q. Were not two or three of them struck off to Milligan?

A. Well, I wouldn't say positively about that, but I think
446 he bid on some of the job lots, but I wouldn't say that they were struck off to him or not.

Q. Is it not a fact that Milligan's final bid just exceeded the total of these final job-lot bids by about twenty-five dollars?

A. That is not my recollection.

Q. Who got up the scheme of the sheriff to sell them in this manner?

A. Well, I think that was the way that the court suggested, probably; he thought that would be a better way to sell the goods.

Q. How?

A. It was suggested to the court and the order was made that way to sell them in that way; that was my recollection. We applied for the order and the order was made in that way.

Q. You think so?

A. Yes, sir; I have had orders made in the same way, and I think I had that one made in that way.

Q. Is it usual to have goods sold in that way in separate lots, conditionally?

A. Well, it has been my experience that that was the best way to sell them. It has been done before in this country. We tried to sell them two ways.

Q. Did you and Overstreet talk with the sheriff about selling them that way?

A. They were ordered to be sold that way.

Plaintiffs move to strike out as to the statement of the contents of the order of the court. Sustained. Exception.

Q. Mr. Wisby, you and Mr. Cunningham—Cunningham & Wisby—have always been attorneys for M. D. Wells & Co. from the beginning of this case, have you not?

Objected to as not proper cross-examination. Overruled. Exception.

A. Yes, sir; I think so.

Q. You drew the original petition in the case yourself and verified it?

Objected to as incompetent, irrelevant, and immaterial;
447 which objection was by the court overruled; to which defendant excepted.

A. Probably I did. We brought several suits for some parties, and I drew some of the petitions and verified some of them, and Mr. Cunningham did, I think. I don't remember for certain about this one. Probably I did verify it; I have a recollection that I did, but I am not sure. You know it has been a long time ago, and the papers are here.

Redirect examination by Mr. OVERSTREET:

Q. I will get you to examine this paper marked Exhibit Three, and state to the jury what it is.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiff- excepted.

A. I think this is the order of sale that the sheriff was acting under.

Plaintiff- moves to strike out the statement as not the best evidence; which motion was by the court overruled. Exception.

Q. Anything else connected with it?

A. And also a notice and proof of publication of the notice, and the notice under which the sale was conducted.

Plaintiff- moves to strike out the statement as a conclusion of the witness—not the best evidence; which motion was by the court overruled. Exception.

Q. I will ask you if that is the order of sale that you mentioned in answer to a question on cross-examination by counsel as to how the sheriff came to make the sale in the manner in which you described.

Plaintiff- excepts to the statement of counsel as misconduct, and we object as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. That is the paper that I referred to.

Defendant now offers in evidence the paper identified as Exhibit Three for the purpose of showing why the sale was made as it was

Objected to as immaterial, incompetent, and irrelevant, and not within the issues in this case; which objection was by the court sustained; to which the defendant excepts.

See pp. 288 to 291.

448 Here counsel for defendant produces a stipulation and introduces the same in evidence; which said stipulation is admitted in evidence and is in words and figures following, to wit:

Stipulation.

In the District Court of the First Judicial District, Holding Terms at Guthrie, in and for Logan County, Territory of Oklahoma.

E. S. JAFFRAY & Co.
vs.
—— ——. } #360.

M. D. WELLS & Co.
vs.
W. F. WOLFE & SON. } #361.

RICE, STIX & Co.
vs.
W. F. WOLFE & SON. } #362.

ALEX. FRANKENTHAL ET AL.
vs.
W. F. WOLFE & SON. } #367.

SWEET, DEMPSTER & Co.
vs.
W. F. WOLFE AND SON. } #368.

BURNHAM, HANNA, MUNGER & Co.
vs.
W. F. WOLFE & SON. } #398.

JOHN V. FARWELL
vs.
W. F. WOLFE & SON. } #402.

HENRY W. KING & Co. ET AL.
vs.
WILLIAM GRIMES.

HENRY W. KING & Co. ET AL.
vs.
LEANDER T. SHOCKEY.

HENRY W. KING & Co. ET AL.
vs.
CHARLES H. DE FORD.

449 It is hereby agreed by and between the undersigned, who are attorneys for plaintiffs and defendants in the above-entitled actions, as will appear on the files of each case respectively—

That all of the depositions taken or which may be taken in any one of the above-entitled actions may be used and read in evidence interchangeably in each and every one of the other of the above actions;

And also that the oral testimony taken on the trial of the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son in said cause may be used in evidence interchangeably by either party in any of the above-named actions, unless the witness giving the testimony should be present in court at the trial of any one of said causes, so that said witness could be offered as a witness for either party.

It is further stipulated and agreed that a copy of any depositions taken in the case of John G. Miller & Co. *vs.* William F. Wolfe & Son *et al.*, # 12452, pending in the district court of Shawnee county, in the State of Kansas, duly certified to by the clerk of said court, and any and all interrogatories propounded, answered, and filed in any of the above-entitled causes to the same effect and subject to the same stipulations regarding the depositions herein mentioned.

It is further stipulated and agreed that any and all of the depositions and interrogatories in any of the cases pending in the district court of Logan county, Territory of Oklahoma, may be used and read in evidence by certified copies thereof, duly certified to by the clerk of the district court of Logan county, Territory of Oklahoma, in said action of John G. Miller & Co. *vs.* William F. Wolfe & Sons *et al.*, subject to the same condition as the certified copy of the deposition in the case of John G. Miller & Co., are herein stipulated to be used and read in evidence in said causes pending in the district court of Logan county, Oklahoma Territory.

450 It is expressly understood and agreed that said depositions and testimony and interrogatories and other matter can be used in evidence in any one of the said causes the same as if it had been taken properly in the cause on which it is at the time offered, provided, however, that any and all objections to incompetency, irrelevancy, and immateriality are hereby saved.

(Signed) HARPER S. CUNNINGHAM.
S. L. OVERSTREET.
CUNNINGHAM & WISBY.
BIERER & COTTERAL.

451 *Testimony of Louis H. Wolfe.*

LOUIS H. WOLFE, being called as a witness for the defendant, testified as follows:

Direct examination by Mr. HORNOR:

Q. I will ask you whether or not at any time you were the owner of any real estate in Topeka, Kansas.

A. Yes, sir.

Q. Please describe that real estate.

A. It was a lot 122 feet and six inches wide, and two hundred and five feet deep, and a two-story frame residence.

Q. Do you remember the numbers of the lot?

A. No, sir; I don't.

Q. Was it lot 15 or lot 20?

A. I don't remember the number—well, I should judge it was lot 15, being on the west side of the street.

Q. Now, please state what the cost of the improvements was upon that lot.

A. I could not say as to the exact amount.

Q. Well, give it about.

A. About fifty-eight hundred or six thousand dollars.

Q. Did you own any other real estate in Topeka?

A. No.

Q. About what was the value of the house and lot and the improvements in 1890?

A. I couldn't say as to that.

Q. To refresh your memory, I will ask you if you remember testifying in the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son that the property was worth about ten thousand dollars.

452

A. No, sir; I don't remember testifying that way.

Q. Do you remember testifying in that case—E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son?

A. If that was the case that was on trial down here; yes, sir; I remember it.

Q. You don't remember the case that was on trial yet?

A. If that was the case, I testified in it; I don't remember what the title of the case was; I forget.

Q. Do you remember testifying in that case about what the value of the property was?

A. No, sir. I may have so testified and may not; I don't remember.

Q. Now, I will ask you if your father, W. F. Wolfe, owned any real estate in Topeka, Kansas, in 1890.

Objected to as not the proper way to prove ownership and incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. I will ask you to state if you know whether W. F. Wolfe, your father, owned any real estate in the city of Topeka in 1890.

Objected to as last above. (No ruling.)

A. I do not.

Q. Do you know whether he owned any there at any other time?

Same objection as last above; which objection was by the court sustained; to which defendant excepted.

Q. Do you know whether or not he owned any there prior to 1890?

Same objection as last above; which objection was by the court overruled. Exception.

A. I do not of my own knowledge. I never saw the deeds to any

property that he owned. We occupied property and I paid taxes on property for him and I presume he owned it.

453 Plaintiff- moves to strike out the answer as not the best evidence; which motion was by the court sustained. Exception.

Q. I will ask you if you do not know that your father owned a homestead in Topeka, Kansas, in 1890.

Objected to as incompetent, irrelevant, and immaterial and not the proper way to prove ownership; which objection was by the court sustained. Exception.

Q. Did your father at any time live in Topeka, Kansas?
A. Yes, sir.
Q. Did he live in rented property?

Objected to as last above; which objection was by the court overruled; to which plaintiff- excepted.

A. I did not so understand it.
Q. Well, do you know whether he did or not?
A. When we first went there we rented a piece of property, in which we lived. After that I guessed he bought a piece of property and lived in it.

Plaintiff- moves to strike out the answer as not responsive to the question and hearsay and not the proper way to prove title; which objection was by the court sustained; exception.

Q. How long did he continue to live in rented property in Topeka?

Same objection as last above. Sustained. Exception.

Q. I will ask you to describe to the jury the property which you lived in, in Topeka, just prior to coming to Oklahoma.

Same objection as last above. Overruled. Exception.

A. It was a two-story frame house on a lot 122 and a half feet wide by 205 feet.
Q. Do you know who built that house?

Same objection as last above. Overruled. Exception.

A. Do you mean by that who paid for it or what contractor built it?
Q. Why, I prefer to know just now who paid for it.
A. That I couldn't say; I don't know.
Q. Do you know what contractor built it?
A. Yes, sir.
454 Q. And you don't know who paid for it?
A. No, sir.
Q. Do you know who that house was built for?
A. Yes, sir; for father and my mother to live in.
Q. But you don't know whether they paid for it or not?
A. That I know nothing about.

Q. Do you know whether it was paid for?

A. I know nothing about that at all; there was no money transactions made before me.

Q. Now, I want to ask you if you know about what the cost of the house was, Mr. Wolfe.

Objected to as incompetent, irrelevant, and immaterial and no proper foundation laid; which objection was *objection was* by the court sustained; to which defendant excepted.

Q. I desire to ask you now, Mr. Wolfe, if you did not testify in the trial of the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son, which was tried in this court some time ago, that your father did own the property which you have referred to thus far, in Topeka, in 1890.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. Now, this property that you owned in Topeka, what did you do with that, Mr. Wolfe?

A. Deeded it to my wife.

Q. When?

A. I couldn't say as to the date.

Q. Does she own it yet?

A. Yes, sir.

Q. Was it deeded to your wife prior to the date when you gave the chattel mortgage in December, 1890?

A. Yes, sir.

Q. How much was the firm of W. F. Wolfe & Son owing at the time that they came to Oklahoma?

455 A. I don't know.

Q. About how much?

A. I couldn't even make an estimate.

Q. Couldn't make an estimate?

A. No, sir.

Q. Haven't you any idea at all?

A. No, sir.

Q. Did you furnish Mr. Vance the data from which he drew up the chattel mortgage that was given in December, 1890?

A. In part; yes, sir.

Q. Have you got any data now that you could tell about how much you owed at that time?

A. No; none at all.

Q. I will ask you if you did not testify on the other trial that you owed upwards of twenty thousand dollars at that time.

Objected to as immaterial and cross-examination of his own witness; which objection was by the court sustained; to which defendant excepted.

Q. Now, after you came to Oklahoma Territory did you incur any new indebtedness?

A. Yes, sir; some.

Q. I will ask you to state how much new indebtedness you had incurred at the time—that is, by you I mean the firm—at the time when this chattel mortgage was given.

A. That I could not state.

Q. Give your best judgment about it.

Objected to. Overruled. Exception.

A. I couldn't say even the number—several thousand dollars.

Q. Tell us as near as you can.

A. I would say between ten and twelve thousand dollars.

Q. Now, to refresh your recollection, I will ask you if on the former trial you were not asked this question and if you did
456 not answer it as follows: "Question. What was the amount of the indebtedness of the firm of W. F. Wolfe & Son to other creditors than those named in this instrument headed chattel mortgage on December 15, 1890? Ans. Near nineteen thousand dollars." Do you remember that question and that answer in your testimony on the former trial?

Objected to as leading and suggestive and assuming a fact not proven and an attempt to contradict his own witness; which objection was by the court overruled; to which plaintiff excepted.

A. No, sir; I do not.

Q. Having had the last question propounded to you and having answered it, is your recollection refreshed in any way so that you are enabled to answer what the amount of the new debts was?

A. No; I couldn't say that it is.

Q. About $12,000 is about as near as you can get at it?

A. That is about as near as I can remember now; yes, sir.

Q. Well, now, to refresh your recollection a little further, I will ask you if you know some of the principal creditors of the firm after they came down here. Can you name any of them?

Objected to as last above; which objection was by the court overruled; to which plaintiff excepted.

A. I think that we owed Burnham, Hanna, Munger & Co., of Kansas City, Missouri, and M. D. Wells & Co., of Chicago, and E. S. Jaffray & Co., of New York.

Q. Can you name any others?

A. Yes, sir; there was Miller & Co., or a name of that sort in Chicago.

Q. John G. Miller & Co.?

A. I wouldn't be positive as to the initials.

Q. Rice, Stix & Co.?

A. I don't remember them now.

Q. Frankenthal & Brother?

A. I don't remember them now.

Q. John V. Farwell Co.?

A. I don't remember them.

457 Q. Sweet, Dempster & Co.?

A. Yes, sir; I remember them now, Sweet, Dempster & Co.

Q. Now, are you able to remember the amount of any of this indebtedness that you have mentioned—that is, as to any particular creditor?

A. No, sir; I am not.

Q. You don't remember any of it?

A. No, sir.

Q. Now, to refresh your recollection, Mr. Wolfe, I will ask you if, at the time of your failure in 1890, you did not owe E. S. Jaffray & Co. the sum of $5,250.

A. I don't think I ever saw a statement of the amount. I don't remember it; no.

Q. Do you have any recollection now of ever having heard the figures read enough to know that that is anything like what you owed them at that time?

A. No; I cannot say that I do.

Q. Your mind is a blank upon that?

A. It is upon that, certainly; yes, sir.

Q. Now, to refresh your recollection again, I will ask you if you remember whether or not you owed Burnham, Hanna, Munger & Co. $3,500.

A. No, sir; I do not.

Q. And reading these figures don't refresh your memory in any way at all?

A. No, sir.

Q. Do you remember whether or not you owed Rice, Stix & Co. $754?

A. No, sir; I don't remember anything about it.

Q. M. D. Wells & Co., $2,489?

A. No, sir; I don't remember that.

Q. John V. Farwell Co., $1,400; do you remember about that?

A. Well, I have a sort of a misty recollection that it was something between twelve and thirteen hundred dollars. Still I wouldn't say on oath.

458 Q. That is the only one that you have a misty recollection of?

A. Yes, sir.

Q. Now, to refresh your recollection again, I will ask you if you have any recollection of owing Burnham, Hanna, Munger & Co. $4,799.00.

A. No, sir.

Q. Now, Mr. Wolfe, were you present in Oklahoma city at the time the chattel mortgage was given on that stock of goods?

A. Yes, sir.

Q. Were you present in Guthrie when it was given on that stock of goods here?

A. I was.

Q. I will ask you to state who, if any one, was placed in possession there and here before the chattel mortgages were executed.

A. Before it was executed?

Q. Yes, sir.

A. No one.

Q. To refresh your recollection, I will ask you if Mr. W. L. Harvey was not placed in possession of one or the other of the stocks before the chattel mortgage was executed.

A. I have no such recollection.

Q. I will ask you if you did not testify upon the former trial of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son as follows: "Question. Was it understood that Mr. W. L. Harvey was to be placed in possession of the stock of goods, and was he not placed in possession? Answer. There was no understanding, but prior to the execution of the mortgage Mr. Harvey was placed in possession of the stock as Mr. Vance's agent, as Mr. Vance had business in Topeka that called him there." Do you remember that question and that answer?

A. I do not.

Q. Now you say that Mr. Harvey was not placed in possession before the chattel mortgage was executed?

A. I do.

459 Q. Now, I want to ask you if you at any time owned any property in Oklahoma city.

A. I did.

Q. In what year?

A. 1889.

Q. Did you own any in 1890?

A. I think not.

Q. I am referring now to real estate. What property did you own there in 1890?

A. I owned no real estate there, as I remember, in 1890.

Q. Now, Mr. Wolfe, to refresh your recollection, I want to ask you if you did not testify in the case of E. S. Jaffray & Co. against Wolfe & Son, formerly tried in this court, as follows. I will read several questions and answers to as to make the connection.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiff excepted.

Reads:

"Q. I will ask you to state what real estate the firm of W. F. Wolfe & Son ever claimed to own or based any interest in in Oklahoma city outside of lots 21, 22, and 23, in block 24, in Oklahoma city, prior to July 29th, 1890, and during that year.

A. Some time during the year 1890 they owned the three lots you named, 21, 22, and 23, in block 24, besides the stock of goods there. Did you ever own or claim to own any other property?

A. No, sir; I never owned or claimed to own any.

Q. What kind of title did you have to it?

A. We had the same title that every one had to property there.

Q. What—did you have certificates?

A. Yes, sir.

Q. Whose name were they in?

A. I think during 1890 two of them were in my name and one in my father's.

460 Q. State when, prior to July 29th, 1890, these were transferred.

A. I could not tell when.

Q. Can you give about?

A. Some time during the month of May, 1890."

Now I will ask you if you remember these questions and answers in the former trial that I have referred to.

A. No; I do not.

Q. Now, does the question that has been propounded to you refresh your recollection in any way, so that you can state whether you owned any property in 1890 or not?

A. No, sir; I cannot say that it does. I don't know if one of those lots or two of them or three of them were in my name. There were three of them altogether. My recollection is that all or some of them were in my name in 1889 and might have been in 1890. I said before I don't recollect that I owned any real estate there at all at that time. That is all I can say in the matter.

Q. You don't recollect whether you owned any there or not?

A. I don't recollect if I owned any there in 1890.

Q. Did you own some in 1889?

A. My recollection is that I had those three lots—it might have been only two or one of them—in my name.

Q. Will you please state what you did with them—what disposition you made of them?

Objected to as incompetent, irrelevant, and immaterial and for reasons heretofore stated; which objection was by the court overruled. Exception.

A. My recollection is that they were transferred to my mother or to my father and mother, I wouldn't say just which. That is my best recollection of it.

Q. To refresh your memory, I will ask you if it was not to your mother.

A. That does not refresh my memory. I could not say.

Q. To refresh your recollection, I will ask you if she did
461 not make the application to the town-site board in her own name for the lots.

A. I don't know whether she did or not.

Q. You have no recollection about that or knowledge?

A. I was not there when any such application was made.

Q. Now, at the time that the chattel mortgage was given, in 1890, I will ask you to state, if you are able, whether the firm of Wolfe & Son or either member of it owned any property excepting what was included in the chattel mortgage.

Objected to for the reasons heretofore given; which objection was by the court overruled. Exception.

A. Why, I don't recollect about that. My recollection is that we did not.

Q. I will ask you to state whether in 1890, in December and prior thereto, the firm of William F. Wolfe & Son was able to meet their obligations as they matured.

Objected to for the reasons heretofore given, and also because it calls for a conclusion and not for the primary facts; which objection was by the court sustained; to which defendant excepted.

Q. I will make that a little more specific. I will ask you to state, Mr. Wolfe, whether or not the firm of William F. Wolfe & Son in December, 1890, and immediately prior thereto was able to meet their obligations as they matured.

A. My recollection is that we were paying bills all the time.

Q. I will ask you to state, Mr. Wolfe, whether or not the firm of William F. Wolfe & Son in December, 1890, and immediately prior thereto was able to meet their obligations as they matured.

A. My recollection is that we were paying bills in the first part of December. I know that; and, as to meeting obligations as they matured or not, I couldn't say as to that, because I don't know what you mean.

Q. For the purpose of refreshing your recollection, I will ask you if you were able to pay the debts which were included in this chattel mortgage—some twenty-two thousand dollars—when they
462 matured. That is to refresh your recollection. The notes as they fell due.

A. No, sir; they were renewed generally in every instance, as I remember it.

Q. State, if you know, if you remember whether the firm of W. F. Wolfe & Son was insolvent at the time this chattel mortgage was given.

Objected to for the reasons heretofore given; which objection was by the court overruled. Exception.

A. We did not consider ourselves insolvent.

Cross-examination by Mr. ELLIS:

Q. You have referred to a house and lot that you say you lived in at Topeka, the title to which you say stood in your name at one time and afterwards you deeded it to your wife; how did you get that house and lot?

A. The lot was purchased, and the majority of the money for building the house was given to my wife by her father. The deed to the lot was made out in my name.

Q. You were a married man at the time that the deed was given to you—at the time the house was built—and have been since?

A. I was married as soon as the house was completed; yes, sir.

Q. You moved into it?

A. Yes, sir.

Q. Did your wife live with you?

A. Yes, sir.

Q. Did you live in that house in Topeka, Kansas?

A. Yes, sir.

Q. Did you have any other home of any kind?

A. No, sir.

Q. Did you continue to live in that house in Topeka, Kansas, as long as you lived in Kansas; before you came down here?
A. Yes, sir.
Q. What was the size of the lot?
A. 122 feet and six inches by 205 feet.
Q. It is designated as a lot, is it?
A. Yes, sir.
463 Q. A lot in one piece; altogether?
A. Yes, sir.
Q. Less than an acre in extent, was it?
A. Yes, sir; they call it an acre, but it is a little less than an acre.
Q. You conveyed that particular property to your wife?
A. Yes, sir.

Now, at this time, plaintiff- moves to strike out all of the testimony with reference to the house and lot, as under the law the same would be exempt; which motion was by the court overruled; to which plaintiff- excepted.

Redirect examination by Mr. HORNOR:

Q. What kind of property was that that you owned in Oklahoma city, Mr. Wolfe?
A. Three lots.
Q. Did you have any improvements on them?
A. Yes, sir; it had a one-story frame building on it.
Q. How many rooms did you occupy, or did you occupy it?
A. Well, there were two quite good-sized rooms; one fifty by sixty-five, I think, and the other twenty-five by sixty-five; and then there were a number of small rooms; they were out onto the rear, we used as sleeping-rooms.
Q. Did you occupy that for your store down there?
A. The large room we did; yes, sir.

By Mr. ELLIS:

Q. Referring to this property at Topeka, did you convey that to your wife before you moved to Oklahoma, while you were still living in it?
A. Yes, sir.
Q. And you say that the money by which that house was built was given to your wife by your father-in-law?
A. Not all of it; I put some of it in, but he returned it to
464 me afterwards on consideration of my deeding it to my wife. I wished to move from there further downtown, and he objected to his daughter moving from their immediate neighborhood; he was quite an old gentleman.
Q. Who is your father-in-law?
A. Judge J. T. Clark.
Q. He is one of the parties mentioned in the chattel mortgage?
A. Yes, sir.

Counsel for defendants offer in evidence the deposition of L. M. Wood, which was taken in the trial of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son, for the purpose of establishing the value of this Topeka lot under the stipulation.

By Mr. CUNNINGHAM: Before this stipulation is given any effect, I would like to have the court make a finding with reference to this stipulation signed by Cunningham & Wisby and Bierer & Cotteral that they were the parties who were authorized to make the stipulation.

By the COURT: It appearing to the court from an inspection of the paper which purports to be a stipulation heretofore introduced in evidence in this case, identified as Exhibit Ten, which said stipulation is signed by Harper S. Cunningham, S. L. Overstreet, Cunningham & Wisby, and Bierer & Cotteral, that the attorneys signing such stipulation appearing in this court in this case are the same attorneys appearing in the cases in this court, which said cases are entitled and numbered as appears upon the stipulation, and it further appearing to the court that said parties have power to transact the business of their clients and bind by stipulation said clients to the full extent to which attorneys may in any case bind their clients, and that the same has been properly signed and entered into by the attorneys for the parties, the objection of counsel for plaintiff is overruled. Exception.

465 Here defendant reads from the record *in* file in the office of the clerk of the supreme court of Oklahoma Territory, in the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son, the deposition of S. M. Wood, found on page 80 of said record, in the following words and figures, to wit:

S. M. WOOD, the next witness called, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Direct examination by A. B. QUINTON, plaintiffs' attorney:

Q. State your name, residence, and business.

A. My name is S. M. Wood. I reside at Topeka, Kansas, and my business is a real-estate dealer.

Q. Mr. Wood, you are acquainted with the value of real estate in this county?

A. More or less.

Q. How long have you been in the county?

A. I came here in 1873.

Q. How long have you been in the real estate business?

A. About six years, I guess; think it was in the fall of 1884.

Q. You have been in the business of buying and selling real estate. Do you know the property lot number twenty (20) on Greenwood avenue, in Potwin place, formerly owned by Wm. F. Wolfe?

A. I know lot number twenty (20).

Q. Are you acquainted with the value of that property?

Objected to as incompetent, irrelevant, and immaterial, and not within the issues in this case, and nothing shown or offered to be shown that would bind the plaintiffs in this case; which objection was by the court overruled; to which plaintiffs excepted.

A. I do not know much about the house; I know the lot.

Q. What, in your opinion, was the value of that property during the year 1890, say the first half of the year 1890?

Objected to because the witness has not shown himself competent; which objection was by the court overruled. Exception.

466 A. I should say, at a rough guess, $7,500, which is for the whole thing.

Q. That is the value you would put upon it at any time during the year 1890?

Same objection, ruling, and exception as to the last two questions.

A. Yes, sir; I do not think there is much change from then and now.

Q. What, in your opinion, was the value of lot numbered fifteen (15), Greenwood avenue, in Potwin place, at the same time?

Objected to as incompetent, irrelevant, and immaterial, and because the testimony shows that it was and is the homestead of Louis H. Wolfe and his wife; which objection was by the court sustained; to which defendants excepted.

Q. State what the size of lot number fifteen is.

A. I think 122½ by 205 feet deep.

Q. What would that naked lot number fifteen be worth at that time?

A. Well, I should put it at between $4,500 and $5,00-; when property was selling it ought to have brought $5,000.

By COUNSEL FOR DEFENDANT: I would like to repeat the question the court would not let me read a moment ago:

Q. What, in your opinion, was the value of lot numbered fifteen, Greenwood avenue, in Potwin place, at the same time?

Objected to as above. Overruled. Exception.

A. Would say it was worth $8,500; being on the corner and east front makes it more valuable.

Defendant now offers in evidence the deposition of Mrs. Georgia H. Wolfe, taken in the case of Jaffray & Co. *vs.* W. F. Wolfe & Son, and found on page 100 of said record.

Mrs. G. W. WOLFE, being sworn, cautioned, and examined, deposes and says:

Q. Please state your name, age, and place of residence.

A. Georgia H. Wolfe; age, 56; residence, Oklahoma city.

467 Q. Are you the wife of W. F. Wolfe, of the firm of Wolfe & Son, who recently did business in Oklahoma city and also in Guthrie?

A. Yes, sir.

Q. Who owned the lots where the business house was located in Oklahoma city?

Objected to as incompetent, irrelevant, and immaterial, and that the witness is not competent to testify; which objection was by the court overruled. Exception.

Q. Who acquired the title from the town-site board to those lots?

A. I did.

Objected to same as above. Same ruling and exception.

Q. Did you make a formal application to the town-site board of Oklahoma city for deeds for those lots?

Objected to as not being the best evidence; which objection was by the court overruled. Exception.

By Mrs. WOLFE: Do you mean personally?

Q. Yes, ma'm.

A. No; I did not personally.

Q. Do you remember the description of those lots?

A. No; my memory is so poor I could not describe them in a half hour from now if I knew.

Q. Did you swear to and sign a statement claiming title to those lots and cause it to be filed before the town-site board of Oklahoma city?

Objected to. Overruled. Exception.

A. If it was necessary to be done I did it; I don't remember anything at all about it.

Q. Do you know the location of those lots—the three lots where the business house was situated in Oklahoma city?

A Yes, sir; on Main street.

Objected to as above. Overruled. Exception.

Q. From whom did you get those lots or secure title to them?

468 A. Those lots were given to me by my son.

Q. Louis H.; your son, Louis H. Wolfe?

A. Yes, sir; Louis H.

Q. Did you have certificates from the town-site authorities for those lots?

Objected to. Overruled. Exception.

(No answer.)

Q. Is it not a fact that your son gave you two of those lots and your husband gave you one of them?

A. That may be. My memory is very poor, and on those points I was so perfectly well satisfied that I didn't have it in my mind who gave them to me.

Q. How many lots did you own in Oklahoma city?

Objected to as above; which objection was by the court overruled. Exception.

Q. How many lots did you own in Oklahoma city at the time Mr. Wolfe and Son were in business?

A. Three lots.

Q. Those were the only three lots you owned in the city of Oklahoma?

A. Those were all.

Q. Are they lots 21, 22, 23, in block 34, in Oklahoma city?

A. I can't remember the numbers.

Q. You say that your son gave you those lots. When did he give them to you?

Same objection. Same ruling and exception.

A. I cannot answer that. My memory is poor on dates and numbers.

Q. Did he make any formal transfer to you for the lots; any transfer in writing?

A. I received them from the town site board.

Q. Did he give you any paper in writing before you made your application to the town-site board for deeds?

A. I couldn't say whether he did or not.

469 Q. Are you sure he gave you all three of these lots, or did he not give you two and your husband give you one?

A. That may be; I don't know about that. The lots were given to me by the firm. At any rate, when the townsite board—when I made application to the town-site board they were my lots.

Q. You never paid anything for them?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. I paid $11,000 in the firm.

Q. When did you put that $11,000 in the firm?

Objected to as last above Same ruling and exception.

A. Some years ago; I don't know how long ago.

Q. Well, give us your best recollection as to the number of years ago when you put this money into the firm.

A. Well, 8 or 9 years ago, I think. I am not certain as to the time exactly.

Q. Where was the firm doing business at the time you loaned them this sum of money?

A. In Topeka, Kansas.

Q. Was the style of the firm at Topeka, at the time you put this money into the firm, the same as it was here and at Guthrie?

A. Yes, sir.

Q. Who is Frederick W. Wolfe?

A. My son.

Q. Was not he a member of the firm at Topeka?

A. He had interest in the sales, that is all.
Q. In what way did you have interest in the firm, if any?
A. I had interest in the firm as my money was in the firm.
Q. Did you have part of the proceeds or earnings of the firm?
A. No, sir; I have not.
Q. How long was the firm in business at Topeka, Kansas?
A. I cannot tell you.
470 Q. Was it ten or fifteen years?
A. I don't know.
Q. Was it about the time they went into business there that you advanced that money?
A. Yes, sir.
Q. That was yours individually, was it?
A. It was my money.
Q. Where did you obtain that $11,000?
A. It was my dower from the firm in Cincinnati, where my husband was in business.
Q. From what firm?
A. Charles H. Wolfe & Co.
Q. Was your husband a member of the firm of Charles H. Wolfe & Co. in Cincinnati?
A. He was.
Q. That was dower, was it?
A. It was.
Q. When did they give you this sum of money, that firm?
A. I can't remember that.
Q. Did you ever have it in your possession or under your control?

By Mrs. WOLFE:

A. In what way in my possession or under my control?
Q. Was it ever paid to you?
A. Yes, sir.
Q. Where and when?
A. In Cincinnati, and I put it in the firm at Topeka.
Q. Was it paid to you at the time of your marriage?
A. No.
Q. How long after?
A. I have been married about 30 years, and it was not long after we went to Topeka.
Q. The firm just made you a present of it?
A. Yes, sir; it was in my dower when the firm closed in Cincinnati.
471 Q. The firm closed there just before you and your husband came to Topeka?
A. Yes, sir.
Q. That is, when you say the firm closed, they went out of business there?
A. Yes, sir.
Q. You had never put any of your individual money into the firm of George H. Wolfe & Co.?

A. No; I never put any of my money in except my husband's money.

Q. Was it originally Chas. H. Wolfe & Co. and afterwards changed to Geo. H. Wolfe & Co.?

A. Yes, sir.

Q. What relation, if any, was Charles H. Wolfe to your husband?

A. He was a brother.

Q. Do you remember the date that the firm gave you those lots in Oklahoma city?

A. I do not.

Q. How long prior to the time you made application to the town-site board for deeds to these lots was it that the firm gave you those lots?

A. I don't know. My memory is so poor that I can't remember anything about it.

Q. It was prior to the time you made your application for deeds?

A. Yes, sir.

Q. You say the lots came to you from the firm of W. F. Wolfe and Son?

A. I don't know. I can't say about that. I trusted to their knowledge and judgment, and I did not pay much attention to anything of the kind.

Q. Did you know anything about where the title papers are to those lots that was filed before the town-site board—that is, warranty certificates from the town-site — and evidence you had at the time you made application for deeds?

A. No; I don't know where they are.

(Signed) GEORGIA H. WOLFE.

Sworn to and subscribed before me at the place and within the hours first aforesaid.

[SEAL.] RALPH GUTHRIE,
Notary Public.

My commission expires the 27 day of Dec., 1894.

472 Defendant now offers in evidence the application for a deed made by Mrs. Wolfe, which is found on page 141 of said record.

Objected to for the reasons heretofore given and as incompetent, irrelevant, and immaterial, and not within the issues in this case, and no foundation laid, and not binding upon the plaintiffs; which objection was by the court overruled; to which plaintiffs excepted.

Said application is in the following words and figures, to wit:

Application for Deed.

To board No. two of town-site trustees, assigned by the honorable Secretary of the Interior to Oklahoma city, Oklahoma Territory:

The undersigned respectfully represents that she is the occupant under claim of right of lots No. 21, 22, 23, in block No. 34, in Okla-

homa city, and believes that she is entitled to a deed therefor; that her claim is based on the following grounds:

That on the 4th day of June, 1889, certificates to said lots 22 & 23 were issued to Louis H. Wolfe, who was the lawful occupant of said lots.

That on the 14th day of June, 1889, a certificate was issued to said lot No. 21 to William F. Wolfe, who was the lawful occupant of said lot.

The above-described certificates are hereto attached.

That on the 17th day of May, 1890, she purchased of the said Louis H. Wolfe and William F. Wolfe the above-described lots (see Q. C. deed hereto attached); that she has improvements on said lots to the amount of $1,500.00. She is in undisputed possession of said lots. She is over 21 yrs. of age and a citizen of the United States.

That she did not enter upon said lots nor into said Territory in violation of the act of Congress approved March 2, 1889, nor of the proclamation of the President of the United States issued thereunder.

Therefore she asks that said lots may be set off and allowed
473 to her, and that she may receive a deed therefor.

Date- Sept. 8th, A. D. 1890.

(Signed) GEORGIA H. WOLFE.

TERRITORY OF OKLAHOMA, }
County of Oklahoma. }

Georgia H. Wolfe, being duly sworn, on her oath states—

That she executed the foregoing application and knows the contents thereof, and that the matters and things therein, as stated, she believes to be true.

(Signed) GEORGIA H. WOLFE.

Subscribed and sworn to before the undersigned, a notary public within and for the county aforesaid, this 8th day of Sept., 1890.

In witness whereof I have hereunto signed my name and affixed my official seal the day and year aforesaid.

(Signed) E. J. STEWART,
Notary Public.

My com. expires in June, 1896.

Endorsed on back: No. 63, 64, & 65. Application of G. H. Wolfe. Lots No. 21, 22, 23, block No. 34. Filed Sept. 8, 1890. Levy H. Coe, secretary.

We do hereby certify that the within is a true and correct copy of the original application of Georgia H. Wolfe for deeds to lots 21, 22, 23, block 34, Oklahoma city, O. T., on file in the office of town-site board No. 2, Oklahoma city, O. T.

FRANKLIN D. COE,
WM. KNIGHT,
DAVID H. HAMMONS,
Town-site Board No. 2, Ok. City.

Filed Oct. 24, 1891.

T. G. RISLEY,
Clerk Dist. Court.

Defendant now reads in evidence from the Jaffray record the testimony of David H. Hammons.

DAVID H. HAMMONS, being called, sworn, cautioned, and examined on the part of the plaintiff-, deposes and says:

Q. State your name, age, residence, and occupation.

A. My name is David H Hammons; I am 55 years old; my occupation is that of a lawyer. At present I am a member
474 of town-site board No. two, assigned to duty at Oklahoma city, O. T.

Q. You have been a member of the board since its organization, have you not?

A. Yes, sir; I have been a member of town-site board No. two from its organization to the present time.

Q. Please examine this paper (hands witness a paper) and state whether or not that is a copy of the application for a deed made by Georgia H. Wolfe, now on file with the town-site board No. two, assigned to duty at Oklahoma city.

Objected to, as it is not the proper certification of a copy, that it is not proper evidence of it, and it is incompetent, irrelevant, immaterial, and not within the issues in this case and not binding upon the plaintiffs; which objection was by the court overruled; to which plaintiffs excepted.

By Mr. WISBY: Just ask the notary to mark that certified copy of the application, testified to by Judge Hammons as Exhibit "A," and make it a part of this deposition.

Answer of witness to last question. This paper which I hold in my hand I have carefully compared with the original, on file in our office. I can state that it is a copy of the original application of Georgia H. Wolfe for deeds to lots 21, 22, and 23, in block No. 34, in Oklahoma city. I see here on the back a certificate to that effect, with my signature attached and the signatures of the other members of the *other members of the* board, all of which I recognize.

Q. What became of the certificate referred to as having been attached to this original application of Georgia H. Wolfe for deed to lots No. 21, 22, and 23, in block 34, in Oklahoma city?

A. The custom of the board in all cases where there was no contest concerning the title to the lots applied for and the rights of the applicant were established to the satisfaction of the board and the deed made on application to the grantee in the deed, all certificates, relinquishments, deeds, and other paper evidences of title,
475 filed with his application, were returned to him. I presume that that was the case in this instance, and that accounts for the absence of the papers referred to in the application. In such cases the board retained only the application on file.

DAVID H. HAMMONS.

Subscribed and sworn to before me at the place and within the hours first aforesaid.

RALPH GUTHRIE,
Notary Public, &c.

In addition to the endorsements on the application for a deed just read in evidence is the following:

"Exhibit A," referred to by David H. Hammons, witness testifying before me Oct. 2d, 1891, in case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son.

RALPH GUTHRIE,
Notary Public.

Com. expires Dec. 27, 1894.

Defendant now offers in evidence the testimony of S. J. Bear, found on page 76 of the Jaffray record.

S. J. BEAR, the next witness called, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

Direct examination by A. B. QUINTON, attorney for plaintiff:

Q. State your name, residence, and business.

A. S. J. Bear; I live at Topeka, Shawnee county, Kansas; I am register of deeds of Shawnee county, Kansas.

Q. As register of deeds of Shawnee county, Kansas, have you charge of all of the public records?

A. Yes, sir.

Q. Of the conveyances of real estate in that county?

A. I have.

Q. Have you the record here of the transfers of real estate for the years from 1887, inclusive, to the present time?

A. I have. (Here witness produces records.)

Q. From these records you may state if there is any prop-
476 erty in Shawnee county, Kansas, in the name of Wm. F. Wolfe.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. None that I can find, as shown by the records of this county.

Q. From those records you are able to state whether there is any property in the name of Wm. F. Wolfe or of Louis H. Wolfe?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. The record shows nothing.

Q. State if any record shows a transfer of property in Shawnee county, Kansas, from Louis H. Wolfe to any other person since June, 1887.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. Book 203, page 335, shows transfer from Louis H. Wolfe to Winifred C. Wolfe of lot numbered fifteen (15), Greenwood avenue, in Potwin subdivision.

Q. Is that paper you hold in your hand a copy of that record?

A. It is a certified copy of the transfer.

(Witness here produced certified copy of the record, marked Exhibit "A," and attached hereto.)

Q. Is that all the transfers shown by the records of Shawnee county, Kansas, from Louis H. Wolfe?

A. Yes, sir; it is.

Q. Do the records of Shawnee county, Kansas, show that Louis H. Wolfe owned any property during the year 1890?

A. No; nothing.

Cross-examination by defendant's attorney, M. T. CAMPBELL:

Q. Are you acquainted with Louis H. Wolfe?

A. Yes, sir.

Q. Do you know where he lives?

A. Yes, sir.

Q. Is the property described in that deed the homestead of Louis H. Wolfe?

A. Yes, sir; it is.

477 Q. How long has it been the homestead of Louis H. Wolfe?

A. Well, I suppose it has always been his homestead, but I remember when Mr. Wolfe built the place.

Q. Do you know of any other property that he has ever owned?

A. No, sir.

Q. Where does his father-in-law live with reference to this property?

A. On the same side of the street, about a hundred feet distant.

Q. Mr. Bear, I understood you to say that the records of Shawnee county show that Mr. Wm. F. Wolfe & Son owned no real estate in this county during the year 1890. Is that correct?

A. The records do not show it.

Q. You may state if the records of Shawnee county, Kansas, show that Wm. F. Wolfe owned any property during the year 1890, and, if so, what.

A. The records show that on the 17th day of December, 1890, Wm. F. Wolfe and wife deeded to Laura B. Vance lot numbered twenty (20), Greenwood avenue, in Potwin Place addition to the city of Topeka, Shawnee county, Kansas, subject to an incumbrance of $4,000.

Q. Where was that transfer recorded?

A. It was recorded in Book 203, page 336.

Q. Is the paper that you hold in your hand a copy of that record, showing that transfer?

A. A certified copy; yes, sir.

Witness produced copy, marked Exhibit "B," hereto attached, and made a part of this evidence.

Q. From that record will you state whether there was any other property in this county in the name of Wm. F. Wolfe during the year 1890?

A. Not as shown by the record.

Defendant now offers in evidence the two deeds referred to and found on page 89 of said record, and the same are in the following words and figures, to wit:

EXHIBIT A, S. J. BEAR.

This indenture made this fifth day of July, A. D. 1887,
478 between Louis H. Wolfe of Shawnee county, in the State of Kansas, of the first part, and Winifred I. M. C. Wolfe of Shawnee county in the State of Kansas of the second part:

Witnesseth, that said party of the first part in consideration of the sum of love and affection and one dollar the receipt whereof is hereby acknowledged, doth by these presents grant, bargain, sell and convey unto said party of the second part, her heirs and assigns, all the following described real estate situated in the county of Shawnee, and State of Kansas, to wit, lot numbered fifteen (15) Greenwood avenue, Potwin subdivision of the west ½ of the S. W. ¼ sec. 25 town 11, range 15.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining forever,

And said Louis H. Wolfe for himself his heirs, executors or administrators, doth hereby covenant, promise and agree to and with said party of the second part, that at the delivery of these presents, he is lawfully seized in his own right of an absolute and indefeasible estate of inheritance, in fee-simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments and that he will warrant and forever defend the same unto said party of the second part, her heirs and assigns, against said party of the first part, his heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

In witness whereof, the said party of the first part has hereunto set his hand the day and year first above written.

LOUIS H. WOLFE.

STATE OF KANSAS, } ss:
Shawnee County, }

Be it remembered that on this 5th day of July, A. D. 1887, before me, the undersigned, a notary public in and for the county
479 and State aforesaid, came before me Louis H. Wolfe, who is personally known to me to be the same person who executed

the within instrument of writing, and such person duly acknowledged the execution of the same.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

BISHOP CRUMRINE,
[SEAL.] *Notary Public.*

Term expires April 25, 1891.

Endorsed on back: Deed, general warranty. Louis H. Wolfe to Winifred I. M. C. Wolfe. State of Kansas, Shawnee county, *ss:* This instrument was filed for record on the 17th day of December, A. D. 1890, at 2.15 o'clock p. m., and duly recorded in Book 203, on page 335. Fees, $1.00, p'd. S. J. Bear, register of deeds.

STATE OF KANSAS, }
Shawnee County, } *ss:*

OFFICE OF REGISTER OF DEEDS.

I, S. J. Bear, register of deeds in and for the county and State aforesaid, do hereby certify that the copy hereto attached is a true copy of the original deed now of record in my office.

Witness my hand and official seal this 5th day of August, 1891.

[SEAL.] S. J. BEAR,
Register of Deeds.

EXHIBIT B, S. J. BEAR.

This indenture, made this — day of July, A. D. 1890, between William F. Wolfe and Georgia Wolfe, his wife, of Shawnee county in the State of Kansas, of the first part, and Laura V. Vance, of Shawnee county in the State of Kansas, of the second part:

Witnesseth, that said parties of the first part, in consideration of the sum of sixty-five hundred dollars, the receipt whereof is hereby acknowledged, doth by these presents grant, bargain, sell and convey unto said party of the second part, her heirs and assigns, all the following-described real estate situated in the county of Shawnee, and State of Kansas, to wit: Lot numbered twenty Greenwood avenue in the city of Potwin Place being what was formerly known as Potwin's addition to the city of Topeka.

480 To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining forever.

And said William F. Wolfe & Georgia Wolfe for themselves, their heirs, executors or administrators, do hereby covenant, promise and agree, to and with said party of the second part, that at the delivery of these presents, they are lawfully seized in their own right, of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged, unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and

incumbrances of what nature or kind soever, except a mortgage for $4,000.00 made to C. W. Potwin in his lifetime and now owned by his estate, and that they will warrant and forever defend the same unto said party of the second part, her heirs and assigns, against said parties of the first part, their heirs, and all and every person or persons whomsoever lawfully claiming or to claim the same.

In witness whereof, the said parties of the first part have hereunto set their hands the day and year first above written.

WILLIAM F. WOLFE.
GEORGIA WOLFE.

OKLAHOMA TERRITORY, }
Second *County*, } ss:

Be it remembered that on this 26th day of July, A. D. 1890, before me, the undersigned, a notary public in and for the county and State aforesaid, came William F. Wolfe and Georgia Wolfe, who are personally known to me to be the same persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

D. F. MACMARTIN,
Notary Public.

Term expires 17th June, 1896.

181 Deed. General warranty. From William F. Wolfe and wife to Laura V. Vance. State of Kansas, Shawnee county, ss: This instrument was filed for record on the 17th day of December, A. D. 1890, at 2.20 o'clock p. m., and duly recorded in Book 203, on page 336. Fees, $1.00, paid. S. J. Bear, register of deeds.

STATE OF KANSAS, }
Shawnee County, } ss:

OFFICE OF REGISTER OF DEEDS.

I, S. J. Bear, register of deeds in and for the county and State aforesaid, do hereby certify that the copy hereto attached is a true copy of the original deed, Wolfe to Vance, now of record in my office.

Witness my hand and official seal this 5th day of Aug., 1891.

S. J. BEAR,
Register of Deeds.

Plaintiff here moves that the two deeds in Topeka and the testimony of S. J. Bear with reference thereto be stricken out as not properly exemplified and incompetent, irrelevant, and immaterial; which objection and motion was by the court overruled; to which plaintiffs excepted.

482 *Testimony of Louis H. Wolfe.*

LOUIS H. WOLFE, being recalled as a witness for the defendant, testified as follows:

Direct examination by Mr. HORNOR:

Q. I will ask you to state, Mr. Wolfe, if you know, what the improvements cost on this property where you have stated your father lived, and upon which you have stated that the house was built for him.

A. No; I don't know what they cost.

Q. Are you able to state about the cost?

A. I don't believe I could approximately; I might have known what it was at one time, but I have forgotten it now.

Q. For the purpose of refreshing your recollection, I will ask you to state if upon the trial of the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son in this court you remember the following question being asked and the answer being given, as I will read:

"A. It was lot number twenty, on Greenwood avenue, in Potwin's addition to the city of Topeka. It consisted of an acre with the streets and alleys out, 122 feet. The house cost, to the best of my knowledge, between six and seven thousand dollars. There was a barn and outbuildings attached to the back end of the lot that I think, from what I know of the cost of those things, must have cost about four hundred dollars. The lot itself at the time the building was put on it, taking property in the neighborhood as an estimate, was worth $4,500. The house was furnished with water and gas, and had a well and cistern connected with it."

I will ask you to state if you remember that answer being given by you in answer to the question, "Describe that property."

A. I do not.

Q. After having heard the last question preceding are you able to state that your recollection is refreshed in any way as to the value of the property with all the improvements or the lot itself?

A. No, sir; I cannot say that my recollection is assisted at all.

483 Q. I will ask you in this case if you have any knowledge of the value of property in the vicinity of lot twenty, in Potwin place, in Topeka, or if you had knowledge of the value of property there in 1890.

A. I presume that I had knowledge of the value of property there. I have been living in Potwin place in a general way.

Q. Have you had any experience in building so that you are able to look at a building in Topeka in that neighborhood and say about what it cost?

A. I had one house built, and in which I am now living, is all.

Q. You don't know or have any idea what the cost of the improvements upon the lot I have mentioned was?

A. No, sir; I cannot say that I do.

Recross-examination by Mr. ELLIS:

Q. Referring now to this question that you have been examined on when you were on the stand before, you have spoken of having conveyed to your wife this homestead of yours there; I will ask you whether she afterwards mortgaged it and gave you the money to use in the firm.

Objected to as incompetent, irrelevant, and immaterial and not proper cross-examination; which objection was by the court overruled: to which defendant excepted.

A. Yes, sir; my wife mortgaged the property and gave me the money; part of it went into the store to pay debts.

Q. How much was the mortgage?

A. Three thousand dollars.

Q. Has it been paid?

A. No, sir.

Q. Is it still unpaid absolutely?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Defendant now offers to read in evidence certain portions
484 of the testimony of A. H. Vance which he gave in the trial of the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son, in this court which I have designated.

Plaintiff objects to the offering of a portion of the deposition or testimony of Mr. Vance unless all of the testimony which relates to the matter about which they read the portion be read and because it is not authenticated and it is not proven to be his testimony, but plaintiff says that he will waive that if you will read all which relates to that matter; which objection was by the court sustained; to which defendant excepted.

By COUNSEL FOR DEFENDANT: We now offer in evidence the following, on page 164 of the Jaffray record, and will ask the stenographer to take it, the same being a part of a deposition of A. H. Vance given in said cause.

Q. And this deed from W. F. Wolfe & Son to Laura B. Vance, made in July, 1890, covered the same consideration, did it not?

A. Covered the same consideration.

Q. What was that real estate, deeded by that deed of July 26, 1890, or about that, worth at the time it was transferred by W. F. Wolfe to your wife, Laura B. Vance?

A. Worth between eight and nine thousand dollars—nine thousand, perhaps.

By COUNSEL FOR DEFENDANT: Now, that is as far as I had marked. Shall I read on?

By Mr. ELLIS: I now offer, commencing at this question here and continuing to the end of the deposition, the deposition of Vance.

By the COURT: What other portions of the record, Mr. Ellis, do you wish him to read?

A. Why, I have no objection to this, except it is uncertain, in-

competent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiffs excepted.

Defendant now offers to read in evidence, commencing at the last question on page 84 of the Jaffray record, the testimony of A. H. Vance, and running to the end of the deposition of A. H. Vance, which is in the following words and figures, to wit:

485 Q. You heard Mr. Wood's testimony in regard to the value of the naked lot upon which the Wolfe house is built?

A. Yes, sir.

Q. I will ask you if you know what the improvements on that lot cost.

A. I know very nearly what they cost.

Q. State what they cost.

A. The contract for the house was $4,000. This did not include the furnaces, the four grates which have been put in, nor the stable, the outhouses, the cistern, the sidewalk, fences, nor grading. All of the improvements cost something over $5,000; the exact amount I do not know.

Q. You built the house you live in?

A. Yes, sir.

Q. And are acquainted with what such buildings cost?

A. I think I am acquainted with the cost and value of that character of improvements. I know what that cost by having drawn the contract and been present and heard the discussion about it from the time it was commenced until finished.

Q. Did you say it was worth all it cost?

A. I think it is. The property is in just as good shape now as it was when finished.

Q. And has always been kept in good shape?

A. Yes, sir.

Q. Then what would you say, Mr. Vance, was the value of the property in the first half of the year 1890?

A. That property was worth at that time $9,000. It was always talked of and estimated as being worth $10,000, as Lou. Wolfe's house was also, both houses but a short time before being worth considerably more than $10,000 apiece.

(Signed) A. H. VANCE.

Defendant now offers to read from the evidence of A. H. Vance in the E. S. Jaffray case, on page 166 of the record.

486 Objected to, as it is wholly incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiffs excepted.

Counsel for defendant reads in the following words and figures, to wit:

Q. Now, what was the amount of the liabilities of W. F. Wolfe & Son to other creditors than those mentioned or named in the chattel mortgage of December 15, 1890, at that time?

A. I did not know then and don't know now.

Q. Didn't you know that they had other creditors at the time?

A. I did.

Q. What information did you have as to the amount of their liabilities?

A. I did not have very much information about it at all. Mr. W. F. Wolfe said something about their having purchased goods to the amount of fourteen thousand dollars. Of whom it was they bought them or whether they had them all at that time he did not say.

Q. Did he state that any of them had been paid for?

A. He did not.

Q. Didn't you understand, as a matter of fact, that they still owed about that amount to other creditors?

A. I knew nothing about it except what he stated at the time.

Q. Had you ever before that time taken a chattel mortgage on the stock of W. F. Wolfe & Son?

A. I had not.

Q. What caused you to take it at that time?

A. Because at that time there had been a suit brought in the court there for a small account—I have forgotten just what the amount was—which they did not have the money to pay, and, fearing that it might result in the precipitation of creditors upon them, I took this chattel mortgage.

Q. You were apprehensive of attachments or executions by their creditors against the firm, were you?

A. I had no reason to apprehend any attachment, but thought there might be suits.

Q. From what I understand from your answers, you ap-
487 prehended that some kind of process looking toward the securing of payment of — from their property. Was that it?

A. I simply thought that, being this distance away, it was nothing but right that these creditors and myself should be secured, in view of the suits which might be brought against them.

Q. How long had any of the indebtedness to the Bank of Topeka, the Central National Bank of Topeka, Henry W. King & Co., Tootle, Hosea & Co., the indebtedness named in this chattel mortgage, been running?

A. The indebtedness to the Bank of Topeka or a portion of it had been running for two or three years; I am not certain how long; the indebtedness to the Central national bank, I think about two years, if I recollect correctly; the indebtedness to Tootle, Hosea & Co. I do not remember, but a year, perhaps; to Henry W. King & Co. about the same, as far as I recollect now.

Q. Did Henry W. King & Co. or Tootle, Hosea & Co. direct you to go to Oklahoma and take that chattel mortgage of W. F. Wolfe & Son?

A. If you mean that they gave me specific directions at that time they did not.

Q. Did they direct you at any time to take that chattel mortgage?

A. In specific terms they did not.

Q. Did the Bank of Topeka or the Central National Bank of Topeka direct you to take or secure that chattel mortgage?

A. Not in terms in that way.

Q. Isn't it a matter of fact that you took that mortgage for the benefit of the sureties on the notes to the Bank of Topeka, the Central National Bank of Topeka, Henry W. King & Co., and Tootle, Hosea & Co. and not with the direction of these parties—that is, the holders of the note so to do?

A. I did not.

Q. You did not take it with the directions of any of the holders of the note, did you?

A. In the manner in which you put the question, I did not.

Q. Isn't it a fact that the securities—that is, yourself and
488 D. A. Harvey—on the Bank of Topeka, the Central National Bank of Topeka, Kansas, and the Tootle, Hosea & Co. notes amply secured those notes to these parties?

A. It is not.

Q. For what reason?

A. Because they are not able to pay them; I am not.

Q. Which one of the notes if J. T. Clark security on?

A. On the $5,000 note to the Bank of Topeka.

Q. Did not his endorsement or security on that note amply secure it to the bank?

A. I suppose it does.

Q. Did it not at the time the mortgage was taken?

A. Yes, sir.

Q. What one of these notes mentioned in the mortgage was not amply secured to the holder thereof by the sureties or endorsers?

A. I don't know.

Q. Can you name any one of the notes that was not secured to the holders without the mortgage?

A. I do not know of any one but the $5,000 note that was secured; that is amply secured.

Q. What note is that; the $5,000 note you refer to?

A. The $5,000 note that J. T. Clark is on.

Q. Who signed the chattel mortgage mentioned and where?

A. Louis H. Wolfe signed it at Guthrie, and I am not sure whether W. F. Wolfe signed it at Oklahoma city or not, but I think not; I think Louis H. Wolfe signed them both under the firm name of W. F. Wolfe & Son; that is my recollection now.

Q. What day and what time of day was the mortgage signed?

A. I cannot remember now what the date of it is. (Here copy of mortgage is handed witness.) It was signed early in the morning of the 15th day of December, 1890, the one that was put on file at Guthrie. He left it with the county clerk for filing.

Q. Where?

A. In Guthrie.

489 Defendant now offers in evidence the following question and answer, on page 83 of the Jaffray record, the testimony of A. H. Vance:

Q. At the time the deed was delivered to your wife, did she take possession of the property?

A. Yes, sir; she did.

At the request of Mr. Ellis counsel continues.

Q. Has she had possession of it ever since—has she had possession of the deed ever since?

A. She has had possession of the deed ever since.

Q. Was there any instrument of writing of any kind given back by your wife to the Wolfes in regard to this property?

A. There was not.

Q. Was this the homestead of Wm. F. Wolfe and his family at the time this deed was made to your wife?

A. It was.

Q. Was there any purpose, as far as you know, in keeping this deed of record?

A. There was not; it was simply forgotten.

Q. I will ask you whether at the time this deed was made to your wife there was any express agreement that it should be reconveyed to Mr. Wolfe.

A. There was no agreement of any kind at all. I intended, and that was the intention of my wife also, in case this money was paid in any way, to deed this property back, and I have no doubt but that Mr. Wolfe so understood it, but there was not a word said about it.

Q. Was there any purpose on the part of Mr. Wolfe, so far as you know, to defraud any of his creditors in making that deed to your wife?

A. I know there was not. As I have said before, it was made at my suggestion and to protect me in the money that he owed me, and I am more than willing to deed it back when my money is paid.

Q. I will ask you how far you live from this property.

A. I live upon the adjoining lot.

490 Q. How long have you lived there?

A. I have lived there ever since August, 1887.

Q. Have you lived there ever since the Wolfe house was built?

A. Yes, sir; and before that.

Defendant now offers and reads in evidence from the testimony of A. H. Vance, found on page 162 of the record in the Jaffray case:

Q. You are a son-in-law of W. F. Wolfe?

A. I am.

Q. When was that firm first organized or any firm under the name of W. F. Wolfe & Son?

A. I am not able to tell; it has been organized ever since I knew the family, which is about eleven years, I believe.

Q. Who first composed the firm of W. F. Wolfe & Son?

A. So far as I know, W. F. Wolfe and Louis H. Wolfe.

Q. Who other than these two persons have been members of that firm at any time since its first organization?

A. No one that I know of.

491 *Testimony of S. L. Overstreet.*

S. L. OVERSTREET, being recalled as a witness for defendant, testified as follows:

Direct examination by Mr. HORNOR:

Q. I will ask you to examine Exhibit M. Did you ever see that before?

A. Yes, sir.

Q. Have you had it in your possession at any time?

A. Yes, sir; I have had it in my possession.

Q. I will ask you if you were employed or have been employed as attorney for Burnham, Hanna, Munger & Co.

A. I was employed as the attorney of Burnham, Hanna, Munger & Co. and to bring some actions against W. F. Wolfe & Sons, and defend others growing out of the indebtedness of W. F. Wolfe & Son to them.

Q. When were you employed?

A. About the middle of December, 1890.

Q. Have you since been acting as their attorney?

A. I have.

Q. How long have you had that paper in your possession?

A. My recollection is that I have had that in my possession for over two years; I think I handed it to you yesterday.

Q. And it has been in your possession?

A. Yes, sir.

Defendant now offers to read in evidence the letter identified by the witness Louis H. Wolfe when on the stand and marked by the stenographer as Exhibit M.

Objected to as incompetent, irrelevant, and immaterial and no proper foundation laid; which objection was by the court overruled; to which plaintiff excepted.

Counsel for defendant reads the letter in the following language, to wit:

TOPEKA, *January 4th*, 1888.

Messrs. Burnham, Hanna, Munger & Co.

492 GENTLEMEN: On the 2nd day of Jan'y, 1888, my son, Fred W. Wolfe, was admitted a partner in our firm, the style now William F. Wolfe & Sons. He has added a modest capital to the means of the firm. The senior partner has increased the capital for more than ten thousand dollars, having added that much to the means of the concern.

Very truly, WILLIAM F. WOLFE & SONS.

(Exhibit M.)

Defendant now offers to read that portion of the testimony of A. H. Vance found in the Jaffray record, on page 175, relative to the financial ability of J. T. Clark with reference to the note which he signed.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiffs excepted.

"I was authorized by all these mortgagees to look after their interest as well as my own in regard to the indebtedness to them of W. F. Wolfe & Son. I was authorized by them to take any security that I might be able to get to them for their benefit without being specifically directed to take this particular chattel mortgage, and I say that this indebtedness was not amply secured by our endorsements, because Mr. Harvey and myself are not, either of us, able to pay it, and believe that to be true as far as he is concerned and know it to be true as far as I am concerned. J. T. Clark's endorsement upon the $5,000 note to the Bank of Topeka, I presume, makes that note secure, independent of the chattel mortgage."

By the COURT: This testimony appears to have been given in the fall of 1891.

Defendant now offers to read, on page 169 of the Jaffray record, from the testimony of A. H. Vance.

Objected to as incompetent, irrelevant, immaterial, not within the issues in this case, and not binding upon the plaintiffs; which objection was by the court overruled. Exception.

493 Q. Which of the notes is J. T. Clark security on?

A. On the $5,000 note to the Bank of Topeka.

Q. Did not his endorsement or security on that note amply secure it to the bank?

A. I suppose it does.

Q. Did it not at the time the mortgage was taken?

A. Yes, sir.

Q. What one of these notes mentioned in the mortgage was not amply secured to the holder thereof by the sureties or endorsers?

A. I don't know.

Q. Can you name any one of the notes that was not secured to the holders without the mortgage?

A. I do not know of any one but the $5,000 note that was secured; that is amply secured.

Defendant now offers to read from page 249 of said record of the testimony of A. H. Vance.

Objected to as to previous offers; which objection was by the court overruled. Exception.

Q. Did J. T. Clark secure the note he was on?

A. He signed the note.

Q. Was he not ample security on the note of Dec. 15th, 1890?

A. I suppose you mean by that as to whether he was able to pay it. He was able to pay it.

Q. Was D. A. Harvey able to pay the note he was on?

A. I don't know; I hardly think it.

Q. Was he not worth $150,000 at that time?

Objected to. Sustained.

Q. Who held this $4,000 on this property that Wm. F. Wolfe and Georgia Wolfe deeded to Laura Vance?

A. It went to the heirs of the Potwin estate.

Q. That wasn't any of the indebtedness mentioned in the chattel mortgage?

494 A. No, sir; that is outside.

Q. When was this indebtedness mentioned in this instrument created, if you know?

A. I cannot give you the date; it was at various times. It was some time in the spring of 1890.

Q. Before the store was moved from Topeka?

A. I think so; about that time.

Q. Then all of this indebtedness was made before the stock was moved from Topeka to Guthrie and Oklahoma city?

A. Yes, sir.

Q. When was this debt to D. A. Harvey created?

A. I believe that the debt created to Tootle, Hosea & Co. was in the spring of 1890, in March or April, and the debt to the Bank of Topeka, the $5,000.00, was made the same spring, and the other debt to the Central national bank was made during the period of a year and a half preceding that; the Central bank, perhaps a year. I might possibly be mistaken, because there was several renewals of these notes.

Defendant now offers to read from page 165 of the record for the purpose of showing the connection of A. H. Vance with the other parties, the same being from the testimony of A. H. Vance.

Q. I will ask you to state whether you went to Guthrie, Oklahoma, about the 15th of December, 1890; and, if so, for what purpose.

A. I went to Oklahoma about that time to see W. F. Wolfe & Son and see what condition they were in and what could be done with regard to their indebtedness, for which I was one of the securities.

Q. What indebtedness do you refer to?

A. The indebtedness to the Bank of Topeka, the Central National Bank of Topeka, Tootle, Hosea & Co., Henry W. King & Co., and myself.

Q. Under whose direction and by whose authority did you make that trip?

A. My own.

Q. Anybody else's?

A. Those that were interested besides myself.

495 Q. Who directed you to make that particular trip?

A. Nobody directed me to make that particular trip.

Q. What did you do while in Oklahoma on that trip?

A. Took a chattel mortgage on the stock of goods, both at Guthrie and Oklahoma city, of W. F. Wolfe & Son.

Q. What other property, if any, did W. F. Wolfe & Son own or possess at the time that chattel mortgage was taken than that named in the chattel mortgage?

Objected to as calling for a conclusion, incompetent, irrelevant, and immaterial, and no foundation laid for it; which objection was by the court overruled; to which plaintiffs excepted.

A. I do not know of any.
Q. Do you know as a fact that they had none other?
A. I suppose that to be true.

By Mr. HORNOR: I will read now to the same effect or purpose from page 168, testimony of A. H. Vance.

Q. Did Henry W. King & Co. or Tootle, Hosea & Co. direct you to go to Oklahoma and take that chattel mortgage of W. F. Wolfe & Son?
A. If you mean that they gave me specific directions at that time, they did not.
Q. Did they direct you at any time to take that chattel mortgage?
A. In specific terms they did not.
Q. Did the Bank of Topeka or the Central National Bank of Topeka direct you to take or secure that chattel mortgage?
A. Not in terms in that way.
Q. Isn't it a matter of fact that you took that mortgage for the benefit of the sureties on the notes to the Bank of Topeka, the Central National Bank of Topeka, Henry W. King & Co., and Tootle, Hosea & Co., and not with the direction of these parties—that is, the holders of the notes—so to do?
A. I did not.

Q. You did not take it with the directions of any of the
496 holders of the notes, did you?

A. In the manner in which you put the question, I did not.

Q. Is it not a fact that the securities—that is, yourself and D. A. Harvey—on the Bank of Topeka, the Central National Bank of Topeka, Kansas, and the Tootle, Hosea & Co. notes amply secured these notes to these parties?
A. It is not.
Q. For what reason?
A. Because they are not able to pay them; I am not.

Plaintiffs move to strike out this testimony because it is the second time it has been read; which motion was by the court overruled; to which plaintiffs excepted.

By Mr. HORNOR: I read now from page 175.

Objected to because he has just read it. Overruled. Exception.

Q. When was this authority given you by the holders of these notes to take or get security of W. F. Wolfe & Son?
A. There was no specific time in which that authority was conferred in that way; they, all of them, spoke to me more or less fre-

quently with regard to it, and looked to me to take care of their interests in regard to taking any security for protection that could be taken.

By COUNSEL FOR DEFENDANT: I now offer the testimony of Mr. Vance given at another time and place on the same subject. This which I have just read was given in a deposition taken in the city of Topeka, Kansas. We now offer the testimony of Mr. Vance given here, in Guthrie, on the trial of the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son. Counsel reads as follows:

Q. I will ask you to state what, if any, understanding or authority you had from the mortgagees who you represent here in taking of this mortgage concerning the looking after their debt.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

497 *Testimony of A. H. Vance.*

A. H. VANCE, being recalled by defendant for further cross-examination, testified as follows:

Cross-examination by Mr. HORNOR:

Q. I will ask you, Mr. Vance, to state what, if any, understanding or authority you had from the mortgagees whom you represented in taking that chattel mortgage with reference to looking after their debts.

A. I had no specific understanding at that particular time; my connection with the indebtedness was such and the inquiry was made of me repeatedly by the principals and those that were in Topeka, and their statements to me with regard to their expectation that I would look after and take care of their interests, and they were looking to me to do that was the authority upon which I acted.

Q. How long prior to the taking of the chattel mortgage had that kind of authority been given you?

A. Well, I hardly know whether I could fix any definite time; so far as the banks were concerned, from the time when these notes were renewed, and there were frequently objections made, and my urging them to extend the paper at that time, and repeatedly during those times——

Q. But that does not say how long you had it.

A. That is the only way I can answer it; I don't know what length of time it would run over, only as it would occur when these notes were renewed and at other times; it did occur, too, at other times.

Q. And you were keeping watch of the situation down here, were you, for all of them?

A. Not until I came down: no, sir.

Q. That was when you commenced to keep watch, when you came down?

A. Yes, sir.

Q. How did you come to come down at that particular time?
A. I had received a letter that there was a suit (interrupted)——

Objected to as not the best evidence. Sustained. Exception.

Q. Have you that letter?
A. I have not.
498 Q. Now, I want to ask you if at any time you telegraphed Mr. W. L. Harvey to come down here.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiffs excepted.

A. I telegraphed Mr. Harvey on the 15th of December. I think I telegraphed him to know whether he was coming down that day or that evening.
Q. You telegraphed him on the 15th?
A. Yes, sir.
Q. Did you get any reply from him?
A. I did not.
Q. Where did you telegraph to?
A. Minneapolis, Kansas.
Q. What time in the day did you telegraph him?
A. I really cannot tell you now; some time in the afternoon, I believe.
Q. He got there that night?
A. Yes, sir; he was on his way when I telegraphed him and did not receive it.
Q. You knew that he was coming?
A. I was told that he was expected very soon, and that was the reason I telegraphed.
Q. You were at the train to meet him?
A. I did meet him at the train.
Q. You had received information, had you not, Mr. Vance, that a suit had been commenced at Oklahoma city against W. F. Wolfe & Son?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. I had.
Q. Did you receive that by letter or by telegram?
A. By letter.
Q. Do you remember whether that letter was dated recently?
A. Do you mean do I remember the date?
Q. Yes, sir.
499 A. I cannot tell now.
Q. And then you immediately came down to Oklahoma city?
A. Yes, sir.
Q. Who did you receive that letter from?

Objected to as not the best evidence; which objection was by the court overruled; to which plaintiffs excepted.

A. W. F. Wolfe.

Q. One other question, When you left here in December, after taking the chattel mortgage, you got home on the 17th?

A. I have not any distinct recollection of the date, but I suppose that I did.

Q. You went, then, and put on record the deed that had been given to Mrs. Vance, your wife?

Objected to as a repetition; which objection was by the court overruled. Exception.

A. I don't know whether I did or some one else did. Somebody did it; it was done.

Q. I will ask you if you did not also put on record or have put on record the deed from Louis H. Wolfe to Mrs. Wolfe, his wife.

A. I did not.

Q. Were you present when the deed was filed for record?

A. I have no recollection of it if I was.

Q. Do you know who took that deed there to be filed for record?

A. If I did, I don't remember it now at all; I don't have any recollection of ever having done it.

Q. Do you remember anything about this deed to your wife being filed? The fact itself I am asking for now, as a distinct matter.

A. I do not now; I know it was filed.

Q. And you don't know who had the other one filed?

A. I do not.

Q. Where was Louis H. Wolfe at that time?

A. He was here, so far as I know.

Q. Where was Mrs. Wolf, his wife?

500 A. She was in Topeka.

Q. She was in Topeka?

A. That is my recollection.

Q. Did you say anything to her about having that deed recorded?

A. I don't think I did at all.

Q. Are you sure that you did not?

A. I feel very sure that I did not.

Q. Do you know who did say anything to her or whether anybody did?

A. I do not know, only from the fact that it was put on record. Somebody did it, I presume. I think I could tell you how I suppose it was done.

Q. Then you have no knowledge at all with reference to how that deed was put on record?

A. I don't think I do have any actual knowledge, but I talked to Judge Clark when I got back about the transaction—about what had been done—and told him that; and I would say, although I don't know anything about the transaction, that he had it done.

Q. I will ask you to state, from your knowledge, do you know whether these deeds were placed on record within a minute or two of each other.

A. I do not.

Q. You hadn't any knowledge as to that fact at all?

A. Why, I had not; no, sir—that is, I have no recollection of that. Now, that is possible that it was so.

Cross-examination by Mr. ELLIS:

Q. This Judge Clark is the father of Mrs. Louis H. Wolfe, is he not?

A. Yes, sir.

Q. You don't know anything about it, but you just guess that he had it put on?

A. That is the only way I can account for it now. I might have known all about it at that time, but I have no recollection about it now in regard to it, and I have so stated.

Night adjournment.

By WITNESS: I stated yesterday in answer to a question that Mrs. Louis H. Wolfe was in Topeka at the time I went home
501 in December, 1890; that was an error. Mrs. Wolfe was here in Guthrie at that time. I remembered it a moment after I left the stand; I had forgotten it when I was on the stand.

Here defendant offers in evidence the stipulation found on page 52 of the Jaffray record with reference to the deeds which were offered yesterday.

Said stipulation is read to the jury. Whereupon plaintiffs move to strike out the same as not signed by any of the attorneys for the plaintiffs in this case and has nothing to do with it and as incompetent, irrelevant, and immaterial; which motion was by the court overruled; to which plaintiffs excepted.

Said stipulation is in the words and figures following, to wit:

502 In the District Court in and for Logan County, Oklahoma Territory.

E. S. JAFFRAY & Co., Plaintiffs,
vs.
WM. F. WOLFE AND SON, Defendants.

It is hereby agreed by and between Quinton & Quinton and Bierer and Cotteral, attorneys, representing the plaintiffs above and numerous plaintiffs and defendants in actions growing out of the attachments and seizure of a stock of goods formerly owned by the above defendants at Guthrie and at Oklahoma city, Oklahoma Territory, and between Vance and Campbell, attorneys for the above-named defendants, and also for all parties interested adversely to the clients of Bierer and Cotteral in any way growing out of said controversy, that the copies of the deeds attached to the depositions of S. J. Bear, register of deeds of Shawnee county, Kansas, and other witnesses, taken at the office of Quinton & Quinton, Topeka, Kansas, on the fifth day of August, 1891, can be used in evidence

in the trial of the above-entitled cause and of any of the said causes growing out of any of said disputes in and which Bierer and Cotteral may be attorneys for any of the litigants without the certificates required by section 906 of the Revised Statutes of the United States, hereby expressly waiving such certificates and authentication.

BIERER & COTTERAL,
QUINTON & QUINTON,
Attorneys for E. S. Jaffray and All Other Parties Referred To.
VANCE & CAMPBELL,
Att'ys for W. F. Wolfe and Son and All Other Parties Interested Adversely to the Clients of Bierer & Cotteral.

(Endorsed on back:) Filed Nov. 16, 1891. T. G. Risley, clerk.

503 Counsel for defendant offers to read in evidence the interrogatories and the answers thereto propounded to Henry W. King & Co., to be answered in this case; which said interrogatories and answers thereto are in the following words and figures, to wit:

In the District Court of Logan County, Oklahoma Territory.

HENRY W. KING ET AL., Plaintiffs,
vs.
C. H. DE FORD. } Consolidated Action.

Interrogatories propounded by defendant, C. H. De Ford, in the above-entitled action to the plaintiff Henry W. King and Company, filed with the pleadings, relative to the matter in controversy, and required to be answered under oath by said plaintiff, Henry W. King & Company.

(The answers of Henry W. King & Company, of Chicago, Illinois, one of the plaintiffs in the above-entitled action, in the interrogatories propounded by the defendant, heretofore filed in said action.)

HENRY W. KING, being first duly sworn to testify the truth, the whole truth, and nothing but the truth in the above action, in answer to the interrogatories filed therein, as aforesaid, on oath says, in answer to question 1:

Ques. 1. Are you one of the plaintiffs in the above-entitled action? A. I am.

Ques. 2. Are you one of the mortgagees in the pretended chattel mortgage executed December 15, 1890, by the firm of W. F. Wolfe & Son to A. H. Vance and others, a copy of which is filed with and attached to the complaint in the above-entitled action?

In answer to question 2. I am.

Ques. 3. In what amount, if any, do you claim the firm of W. F. Wolfe & Son was indebted to you December 15, 1890, and how was such claimed indebtedness evidenced?

In answer to question 3. $1,058.54; balance of notes and
504 interest, $66.71, a total on December 15th, 1890, of $1,125.25.

Ques. 4. State if you had any security for said claim of indebtedness prior to the execution of the pretended chattel mortgage aforesaid; and, if so, state what that security was.

In answer to question 4. We had the signature of A. H. Vance as a joint signer of the notes given by Wolfe & Sons.

Ques. 5. When did said claim of indebtedness, if any, originate and what was it for?

In answer to question 5. Said indebtedness originated in August, September, and October, 1889, and in February and March, 1890, and arose by virtue of sale of merchandise by Henry W. King & Company to Wolfe & Sons.

Ques. 6. Did you ever take a note for said claim of indebtedness? And, if so, state when and where said note was given.

In answer to question 6. We took notes dated April 11, 1890, at Topeka, Kansas.

Ques. 7. Did you ever take more than one note for said claim of indebtedness? And, if so, state when and where each of the notes was taken, and state in this connection the principal named in each note, the rate of interest, from what date interest was payable, and when was the maturity of each note; also state precisely and clearly the consideration for each note.

In answer to question 7. We took the four notes of Wolfe & Sons dated April 11, 1890, at Topeka, Kansas, said notes being signed by William F. Wolfe & Sons and A. H. Vance. These notes were for the sum of $654.27 each, and bore interest at 8 % per annum from date, and matured respectively on or before May 15, 1890; on or before June 15, 1890; on or before July 15, 1890, and on or before August 15, 1890. The consideration for said notes was merchandise sold and delivered to said Wolfe & Sons, and the account at the time of the execution of said notes was past due.

Ques. 8. If you took a note or notes, as aforesaid, state if
505 any of said notes were secured in any way; and, if so, in what way.

In answer to question 8. At the time of the making of the notes they were not secured other than by the signature of A. H. Vance.

Ques. 9. Was the indebtedness you claim against W. F. Wolfe & Son under the chattel mortgage named for goods and merchandise sold and delivered?

In answer to question 9. It was.

Ques. 10. To whom were the goods sold or delivered? State whether to an individual or individuals, and whether to a firm or firms; and, if a firm, give the name of the firm and where located, and the names of the persons who composed the firm.

In answer to question 10. The goods were sold and delivered to the firm of Wolfe & Sons. We supposed William F. Wolfe, Louis H. Wolfe, and Fred W. Wolfe composed the firm of W. F. Wolfe & Sons, Topeka, Kansas.

Ques. 11. Were those goods and merchandise sold for cash or on credit?

In answer to question 11. The goods were sold on credit.

Ques. 12. If both, how much for cash and how much for credit?

In answer to question 12. I have answered this by the answer to question 11.

Ques. 13. If goods were sold on credit, when was the account and all parts thereof due?

In answer to question 13. The account became due March 1, 1890, and April 1, 1890.

Ques. 14. When was the first note taken?

In answer to question 14. The account was past due, and, as Wolfe & Sons wished for further time, we granted them the extension, and closed the account by taking the notes heretofore referred to.

Ques. 15. State the exact signatures upon each of said notes—that is, the names of makers, sureties, and indorsers.

A. In answer to question 15. The notes were signed by William F. Wolfe & Sons and A. H. Vance.

506 Ques. 16. If you answer that D. A. Harvey, J. T. Clark, or A. H. Vance signed the notes or any of them state fully how they came to sign such note or notes.

In answer to question 16. The account being past due and Wolfe & Sons wishing further time, we granted it on the condition that A. H. Vance sign the notes with them.

Ques. 17. Had you any surety or security for your claim against Wolfe & Son, personal or otherwise, prior to December 15, 1890? And, if so, state fully what security or surety, personal or otherwise, and when it was first obtained.

In answer to question 17. Nothing but the notes of Wolfe & Sons, signed by them and by A. H. Vance.

Ques. 18. Was that surety or security when first obtained good and is it still good?

In answer to question 18. We considered the security afforded by A. H. Vance's signature good at the time it was given, but we do not consider it good at the present time.

Ques. 19. What steps, if any, have you taken, of every nature whatsoever, to collect your claim from said surety or security? State fully.

In answer to question 19. We made every effort possible to collect the notes without commencing legal proceedings.

Ques. 20. If you say that you have taken no steps for the purpose of enforcing the collection of your claim from said security or surety state why you have not done so.

In answer to question 20. This is answered by the foregoing. See answer to 19.

Ques. 21. What, if any, security have you taken for your claim subsequent to December 15, 1890?

In answer to question 21. We have taken no security since December 15, 1890. On that date a chattel mortgage was given by Wolfe & Son on their stock of goods, securing our claim, among others.

507 Ques. 22. Has your claim against W. F. Wolfe & Son been paid since December 15, 1890?

In answer to question 22. It has not been paid since December 15, 1890.

Ques. 23. If any payment or payments have been made thereon state when such payment or payments were made, how much was paid at each payment, and by whom.

In answer to question 23. No payments have been made thereon.

Ques. 24. Has there been any change or changes in the condition or form of your claim or the surety or security for same subsequent to December 15, 1890? And, if so, state fully in what such change or changes consist.

In answer to question 24. None, aside from the mortgage just referred to and the suits now pending.

Ques. 25. What do you claim to be due you from W. F. Wolfe & Son at this time?

In answer to question 25. There is now due Henry W. King & Company from Wolfe & Sons $1,410.00, principal and interest.

Ques. 26. Has any interest been paid to you on the amount you have claimed to be due you from Wolfe & Son; and, if so, when, how much, and by whom?

In answer to question 26. No interest has been paid to us on said indebtedness of Wolfe & Sons since the note due on or before June 15, 1890, was paid, which was July 30, 1890.

Ques. 27. What steps did you take and what efforts did you make to collect your claim against W. F. Wolfe & Son at or prior to the time they removed their stock of goods from the city of Topeka, Kansas, to Oklahoma Territory?

In answer to question 27. We urged payment by letter and finally sent our collector to Topeka for the purpose of getting a settlement.

Ques. 28. If you say you took no steps and made no efforts to collect said claim at or prior to said time state why you did not do so.

508 In answer to question 28. Answered by answer to 27.

Ques. 29. What interest have you in the above-entitled action?

In answer to question 29. The firm of Henry W. King & Company are plaintiffs in said action and are also mortgagees under the aforesaid mortgage by virtue of their indebtedness aforesaid against said Wolfe & Sons.

Ques. 30. What arrangements have you made, if any, to carry on this action or any of the actions growing out of the failure of the firm of W. F. Wolfe & Sons?

In answer to question 30. We retained Messrs. Reed and James, attorneys at St. Joseph, Mo., to prosecute our claim and to look after our interests in this matter.

Ques. 31. Have you agreed with any one or in any manner obligated yourselves to pay and have you paid any of the expenses of carrying on the litigation in this action or in any actions that have

grown out of the failure of W. F. Wolfe & Sons? State fully and specifically.

In answer to question 31. We have retained Reed and James, and have paid them $50.00 as a retainer.

Ques. 32. What business are you engaged in, what kind of goods do you handle, how much capital do you have in your business, and how long have you been engaged in such business?

In answer to question 32. Wholesale clothing. We have been in business 25 years, and have sufficient capital, so that we owe no debts.

Ques. 33. State whether or not you know the means, if any, employed by wholesale houses of ascertaining the financial standing and condition of customers and the extent of the credit they are entitled to, and whether or not you knew these means during the year 1890.

In answer to question 33. I do and did so understand during the year 1890.

Ques. 34. If you answer the last above question in the affirmative, please state what those means are and were during the said year of 1890.

In answer to question 34. The usual method is to have
509 personal interview when possible and obtain either verbal or written statements, and then procure the latest information obtainable at commercial agencies, and, if necessary, obtain information from the trade or from whoever parties refer us to, and frequently writing for a statement.

Ques. 35. State whether or not you know of a general and universal custom of your house and of wholesale houses generally with regard to selling goods on credit only to customers who are reported and believed to be solvent, and whose assets are reported and believed to largely exceed their liabilities.

In answer to question 35. I do.

Ques. 36. State if it is not the general and universal custom of your house and the general and universal custom of wholesale houses generally to sell goods and merchandise only to customers believed and reported to be solvent, and whose assets are reported and believed to be largely in excess of their liabilities.

In answer to question 36. It is.

Ques. 37. Is it not also the universal and general custom of your house and of wholesale houses generally to determine and allow the credit customers are entitled to only by their reported and believed solvency and the reported and believed excess of their assets over their liabilities?

In answer to question 37. Credit is usually based upon what we can learn of the party's credit, capital, and capacity.

HENRY W. KING.

Subscribed and sworn to before me this 25th day of April, A. D. 1894.

[SEAL.] CHAS. W. ALLEN,
Notary Public.

510 Defendant now offers in evidence the interrogatories and answers thereto of Tootle, Hosea & Company.

Counsel reads questions and answers in the following language:

In the District Court of Logan County, Oklahoma Territory.

HENRY W. KING ET AL., Plaintiffs, *vs.* C. H. DE FORD. } Consolidated Action.

Interrogatories propounded by defendant, C. H. De Ford, in the above-entitled action to the plaintiff Tootle, Hosea and Co., filed with the pleadings relative to the matter in controversy, and required to be answered under oath by said plaintiff, Tootle, Hosea & Co.

W. W. WHEELER, being first duly sworn, upon his oath says:

At all times referred to in the annexed interrogatories affiant was credit man and business manager of plaintiff Tootle, Hosea and Company, and the said Tootle, Hosea and Company, as said plaintiff, acted solely by this affiant and by none other person connected with said plaintiff in its dealings in the matters and at the times referred to in the annexed interrogatories. None other persons interested in said plaintiff or its business had anything to do with the credit department and management of said plaintiff's business referred to in said interrogatories, except this affiant, who makes these answers on behalf of said plaintiff, Tootle, Hosea & Company.

Ques. 1. Are you one of the plaintiffs in the above-entitled action?

Answer to Ques. 1. Yes; that is, Tootle, Hosea & Co. is one of the plaintiffs.

Ques. 2. Are you one of the mortgagees in the pretended chattel mortgage executed December 15, 1890, by the firm of W. F. Wolfe & Son to A. H. Vance and others, a copy of which is filed with and attached to the complaint in the above-entitled action?

511 Answer to Ques. 2. I have never seen the chattel mortgage referred to, but from what I have been informed, said Tootle, Hosea & Co. is one of the mortgagees.

Ques. 3. In what amount, if any, do you claim the firm of W. F. Wolfe & Son was indebted to you December 15, 1890, and how was such claimed indebtedness evidenced?

Ans. to Ques. 3. $8,100.00, with interest thereon from April 9th, 1890, at 9 per cent. per annum, less $500.00 paid November 6th and $500.00 paid November 12th; $500.00 paid December 10th, in the year 1890; which indebtedness is evidenced by three notes given April 9th, 1890, by W. F. Wolfe & Sons, D. A. Harvey, and A. H. Vance, one note maturing November 1st, 1890, for $2,500.00; one note maturing December 1st, 1890, for $2,800.00, and one note maturing January 1st, 1891, for $2,800.00, all three notes drawing 9 *% per cent.* interest from date.

Ques. 4. State if you had any security for said claim of indebted-

ness prior to the execution of the pretended chattel mortgage aforesaid; and, if so, state what that security was.

Answer to Ques. 4. The security we had prior to the execution of said chattel mortgage was first in the form of notes signed by W. F. Wolfe & Sons and A. H. Vance dated November 30, 1889, and maturing as follows: One note for $2,804.69, due March 15th, 1890; one note for $2,804.69, due April 15th, 1890; one note for $3,457.35, due May 15th, 1890, and one note for $3,457.34, due July 15th, 1890, which last-named four notes were, less $400.00 paid thereon, taken up by new notes dated April 9th, 1890, maturing $2,100.00 August 1st, $2,100.00 October 1st, and the other three notes for $2,500.00, $2,800.00, and $2,800.00 above mentioned by me, which are still unpaid to the extent hereinabove mentioned.

Ques. 5. When did said claim of indebtedness, if any, originate, and what was it for?

Answer to Ques. 5. Said claim of indebtedness originated for goods and merchandise sold by Tootle, Hosea & Co. to W. F. Wolfe & Sons during the year 1889, and the statement of the
512 bills for which merchandise and the interest thereon, together with the credits of goods returned and notes taken in settlement, are set forth in a statement hereto attached, marked Exhibit A, and made a part of this my answer to interrogatory 5.

Ques. 6. Did you ever take a note for said claim of indebtedness? And, if so, state when and where said note was given.

Answer to Ques. 6. First note was taken for a part of said indebtedness, was given on or about August 16th, 1889, made out by the firm in Topeka, and mailed to us in St. Joe, Mo. Other notes were afterwards taken on said indebtedness, as referred to in my answer to question 5.

Ques. 7. Did you ever take more than one note for said claim of indebtedness? And, if so, state when and where each of the notes was taken, and state in this connection the principal named in each note, the rate of interest, from what date interest was payable, and when was the maturity of each note; also state precisely and clearly the consideration for each note.

Answer to Ques. 7. We did take more than one note on the said indebtedness, the first one dated August 16th, 1889, for $5,556.89. My recollection is this was mailed to us from Topeka. It was signed by W. F. Wolf & Sons, matures on the — day of ——, and drew — rate of interest from date. The next notes were dated *and* (as I am informed by the attorney, W. K. James, representing us in this case) at Topeka, Kansas, were signed by W. F. Wolf & Sons and A. H. Vance, drew, if I remember right, 9 per cent. interest from date, matured on March 15, April 15th, May 15th, and July 15th, 1890; and these notes were taken up by other notes dated April 9th, 1890, drawing 9 per cent. interest from date, and falling due August 1st, October 1st, November 1st, December 1st, 1890, and January 1st, 1891, and were signed by W. F. Wolf & Sons, D. A. Harvey, and A. H. Vance; and, as I understand from the attorney who took the notes, they were taken in Topeka, Kansas,

and which notes are described in "Ex. A." The considera-
513 tion of the first note mentioned, as dated August 16th, 1889, was the balance due on account for some goods sold, as I have testified to hereinabove. The next notes mentioned above as dated Nov. 30, 1889, were taken in settlement of the first note and of other merchandise sold to W. F. Wolf & Sons, which merchandise is described by statement thereon of said "Ex. A."

Q. 8. If you took a note or notes as aforesaid, state if any of said notes were secured in any way; and, if so, in what way.

Ans. to Ques. 8. Neither of the notes above mentioned were secured in any way except by the security of the names on said notes, excepting the balance due on the last notes taken, which were also secured, as I understand, by the chattel mortgage above referred to by me.

Ques. 9. Was the indebtedness you claim against W. F. Wolfe & Son under the chattel mortgage named for goods and merchandise sold and delivered?

Ans. to Ques. 9. It was—that is, the notes secured by such mortgage were for goods and merchandise.

Ques. 10. To whom were the goods sold and delivered? State whether to an individual or individuals and whether to a firm or firms; and if to a firm, give the name of the firm and where located and the names of the persons who composed the firm.

Ans. to Ques. 10. The goods were sold and delivered to Wolf & Sons, of Topeka, Kansas, and Oklahoma city, Okla. Ter., in amounts as set forth in said "Ex. A." My recollection was that there were two sons and the father composing the firm. Don't know the names of the sons.

Ques. 11. Were those goods and merchandise sold for cash or on credit?

Ans. to Ques. 11. On credit.

Ques. 12. If both, how much for cash and how much for credit?

Ans. to Ques. 12. All on credit.

Ques. 13. If goods were sold on credit, when was the account and all parts thereof due?

514 Ans. to Ques. 13. The dates of the maturity of the bills of all goods sold are set out in red ink on said "Ex. A."

Ques. 14. Why was the first note taken?

Ans. to Ques. 14. The first note taken was in settlement of an open account, as referred to in said "Ex. A" ans., as above testified to by me.

Ques. 15. State the exact signatures upon each of said notes—that is, the names of makers, sureties, and indorsers.

Ans. to Ques. 15. I have already answered this question as fully as I can.

Ques. 16. If you answer that D. A. Harvey, J. T. Clark, or A. H. Vance signed the notes or any of them, state fully how they came to sign such note or notes.

Ans. to Ques. 16. A. H. Vance signed one set of notes, and he and D. A. Harvey signed the last set of notes for the purpose of securing them, as I take it, as the attorneys were acting under instructions to get security for the indebtedness.

Ques. 17. Had you any surety or security for your claim against Wolfe & Son, personal or otherwise, prior to December 15, 1890? And, if so, state fully what security or surety, personal or otherwise, and when was it first obtained.

Ans. to Ques. 17. I have already answered this question as fully as I can. As I have stated, all the security ever taken so far as I know.

Ques. 18. Was that surety or security when first obtained good, and is it still good?

Ans. to Ques. 18. Whether the surety or security on the notes were or are good I do not know. My information has been that the mortgage made them wholly or substantially secured.

Ques. 19. What steps, if any, have you taken of every nature whatsoever to collect your claim from said surety or security? State fully.

515 Ans. to Ques. 19. We have taken no steps to make said indebtedness out of any surety or security other than the security by chattel mortgage.

Ques. 20. If you say that you have taken no steps for the purpose of enforcing the collection of your claim from said security or surety, state why you have not done so.

Ans. to Ques. 20. I thought it just to make the debt out of the property of the principal debtor rather than the surety or security if we could so make it.

Ques. 21. What, if any, security have you taken for your claim subsequent to December 15, 1890?

Ans. to Ques. 21. None—that is, none since the mortgage.

Ques. 22. Has your claim against W. F. Wolfe & Son been paid since December 15, 1890?

Ans. to Ques. 22. It has not.

Ques. 23. If any payment or payments have been made thereon, state when such payment or payments were made, how much was paid at each payment, and by whom.

Ans. to Ques. 23. Said "Ex. A" shows in detail what payments have been made. They were all made by the debtor firm.

Ques. 24. Has there been any change or changes in the condition or form of your claim or the surety or security for same subsequent to December 15, 1890? And, if so, state fully in what such change or changes consist.

Ans. to Ques. 24. There has not been any change or changes whatever, except what may have been brought about by the litigation in Oklahoma regarding the chattel mortgage in our favor and in the favor of other mortgagees. I refer to the chattel mortgage heretofore mentioned in my answers.

Ques. 25. What do you claim to be due you from W. F. Wolfe & Son at this time?

Ans. to Ques. 25. W. F. Wolf & Sons owe us at this time the same that they owed us on December 15th, 1890; which
516 amount I have answered in my answer to question 3.

Ques. 26. Has any interest been paid to you on the amount

you have claimed to be due you from Wolfe & Son; and, if so, when, how much, and by whom?

Ans. to Ques. 26. No interest has been paid except what may be regarded as included in the payments made as referred to in said "Ex. A." Nothing has been paid, either principal or interest, since December 10, 1890.

Ques. 27. What steps did you take and what efforts did you make to collect your claim against W. F. Wolfe & Son at or prior to the time they removed their stock of goods from the city of Topeka, Kansas, to Oklahoma Territory?

Ans. to Ques. 27. I do not know exactly at what time W. F. Wolf & Sons moved their stock from Topeka, Kansas, to Oklahoma Territory, but we made efforts through our attorneys to collect our claim against W. F. Wolf & Sons at the time the notes were taken in November, 1889, and in April, 1890. I refer to the notes heretofore mentioned by me. We also were about to bring suit on the notes in the United States court, but concluded it not advisable to do so for the time being, and the firm failed before we brought such suit.

Ques. 28. If you say you took no steps and made no efforts to collect said claim at or prior to said time, state why you did not do so.

Ans. to Ques. 28. I have answered this as fully as I can in my answer to question 27.

Ques. 29. What interest have you in the above-entitled action?

Ans. to Ques. 29. I am interested to the extent of 24 per cent. of the whole interest of Tootle, Hosea & Co. in the action, and I suppose their interest would be represented in proportion to their claim, as above testified to by me, with the claims of the other chattel-mortgage creditors. I do not know what the claims of the other creditors are.

Ques. 30. What arrangements have you made, if any, to
517 carry on this action or any of the actions growing out of the failure of the firm of W. F. Wolfe & Son?

Ans. to Ques. 30. We have instructed our attorneys to bring such actions or suits as were necessary to protect our interest as one of the mortgagees in the mortgage given, as I have been informed, in December, 1890, and have given my deposition in two consolidated cases. I believe that this is all that I have personal knowledge of. I, of course, believe our attorneys have been to Guthrie, Ok., to attend to the suits already brought in our behalf.

Ques. 31. Have you agreed with any one or in any manner obligated yourself to pay and have you paid any of the expenses of carrying on the litigation in this action or in any actions that have grown out of the failure of W. F. Wolfe & Son? State fully and specifically.

Ans. to Ques. 31. We have; we have made payments to our attorney to carry on the litigation for us; whether it was applied particularly to this action or not I do not know, but it was for the litigation in our behalf growing out of the action of other parties interfering with our chattel-mortgage security under mortgage

given in December, 1890, to us and other creditors. We also advanced in June, 1891, the sum of ninety-nine dollars, our *pro rata* of advanced attorneys' fees and costs.

Ques. 32. What business are you engaged in; what kind of goods do you handle; how much capital do you have in your business, and how long have you been engaged in such business?

Ans. to Ques. 32. In the wholesale business—dry goods and notions, boots and shoes. We have enough capital in our business to meet all its obligations, and do not think it is necessary for me to state the exact amount. I have been engaged in such business 21 years.

Ques. 33. State whether or not you know the means, if any, employed by wholesale houses of ascertaining the financial standing and condition of customers and the extent of the credit they are entitled to, and whether or not you knew these means during the year 1890.

518 Ans. to Ques. 33. I think I do.

Ques. 34. If you answer the last-above question in the affirmative, please state what those means are and were during the said year of 1890.

Ans. to Ques. 34. By being subscriber of Dun and Bradstreet mercantile agencies and probably some other mercantile agencies, and getting reports from such agencies; also by writing the bankers in the vicinity of the customers, and sometimes by consulting or conferring with other wholesale houses dealing with the customers.

Ques. 35. State whether or not you know of a general and universal custom of your house and of wholesale houses generally with regard to selling goods on credit only to customers who are reported and believed to be solvent and whose assets are reported and believed to largely exceed their liabilities.

Ans. to Ques. 35. I think it is the custom generally of wholesale houses to sell only on credit to customers reported and believed to be solvent and whose assets are sufficient in excess of liabilities to make it safe, after allowing ordinary shrinkage in value of goods, to sell on credit to the customers.

Ques. 36. State if it is not the general and universal custom of your house and the general and universal custom of wholesale houses generally to sell goods and merchandise only to customers believed and reported to be solvent and whose assets are reported and believed to be largely in excess of their liabilities.

Ans. to Ques. 36. I think it is.

Ques. 37. Is it not also the universal and general custom of your house and of wholesale houses generally to determine and allow the credit customers are entitled to only by their reported and believed solvency and the reported and believed excess of their assets over their liabilities?

Ans. to Ques. 37. I think it is.

This affiant further states that these answers to the interrogatories hereto annexed are made for the purpose of being used in any other action in which the plaintiff Tootle, Hosea & Co. is a party.

(Signed) WILLIAM W. WHEELER.

519 Subscribed by said William W. Wheeler and by him sworn to before me on this 5th day of May, A. D. 1894.

[SEAL.] W. K. JAMES,
Notary Public.

My com. expires Aug. 20, 1895.

520 Defendant now offers as a part of his defense-in-chief the evidence of A. H. Vance, taken on the trial of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son, relating to the indebtedness which purports to be secured to him in the chattel mortgage.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled, it appearing that it is conceded that the same is testimony given by Mr. Vance upon a former trial, and it will be considered for the purpose of contradicting or affecting the testimony given in chief in this case; to which ruling of the court the plaintiffs excepted.

Counsel reads:

Q. State, if you know, what real estate, if any, the firm of Wolfe & Son owned or possessed in Topeka at any time during the year 1890.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted. After argument the answer is admitted for the purpose of contradicting his testimony as to the deed being taken as security. Exception.

A. Did not own any that I know of.

By COUNSEL FOR DEFENDANT: We offer to read from the deposition of A. H. Vance, taken in the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son, the same having been the deposition offered in evidence in said cause on the trial thereof in this court, pursuant to a stipulation, said deposition having been taken before M. M. Finley, a notary public in and for Shawnee county, Kansas, on the 24th day of August, 1891.

Objected to as incompetent, irrelevant, and immaterial, and not binding upon the plaintiffs; which objection was by the court overruled and the same admitted for the purpose of affecting the claim of the plaintiff A. H. Vance; to which plaintiffs excepted.

My name is A. H. Vance. I live in Topeka; am a lawyer by profession. I have been living in Topeka for the last twenty
521 years; am acquainted with W. F. Wolfe and Louis H. Wolfe, composing the firm of W. F. Wolfe & Son. W. F. Wolfe is my father-in-law. Louis H. Wolfe is my brother-in-law. I am acquainted with the Bank of Topeka, the Central National Bank of Topeka, Tootle, Hosea & Co., of St. Joe, and Henry W. King & Co., of Chicago. During the years 1889 and 1890, as I recollect now, W. F. Wolfe & Son got from the Central national bank the amount of $2,000 in two separate notes. I became security on each of these notes with D. A. Harvey. D. A. Harvey is a brother-in-law of W. F. Wolfe. These notes were renewed from time to time, how

often I am not able to state, but were still unpaid on the 16th of December, 1890. They also received during these years from the Bank of Topeka the sum of $10,100, which was represented by four separate notes, as testified by Mr. Thurston, cashier. The last note was for $5,000, which was made some time in the spring of 1890; the exact date I am not able to say. These notes were signed by D. A. Harvey and A. H. Vance, as security, and the $5,000 note was also signed, in connection with Mr. Harvey and myself, by J. T. Clark, the father-in-law of Louis H. Wolfe. This sum of money was all unpaid on the 16th day of December, 1890. W. F. Wolfe & Son also owed, as represented by three, as I recollect now, promissory notes, Tootle, Hosea & Co., of St. Joe, amounting in the aggregate to some six or seven thousand dollars. They also owed Henry W. King & Co., of Chicago, twelve or fourteen hundred dollars, the exact amount I cannot recollect now, which was secured by my endorsement. All this money represented by these notes was unpaid and a valid and existing indebtedness against W. F. Wolfe & Son on the 16th day of December, 1890. W. F. Wolfe & Son also owed me the amounts represented by three several notes, aggregating $1,900, with two or three years' interest thereon, which was due and remained unpaid on the 16th of December,
522 1890. I, representing these various parties, some time in December, 1890, visited Oklahoma and W. F. Wolfe & Son executed a chattel mortgage to the Bank of Topeka, the Central National Bank of Topeka, Tootle, Hosea & Co., of St. Joe; Henry W. King & Co., of Chicago; A. H. Vance, D. A. Harvey, and J. T. Clark to secure the indebtedness heretofore stated. Said mortgage was executed and delivered to me, as the representatives of all these various parties, and the stock of goods upon which it was taken was then and at that time taken possession of by me for and on behalf of the said mortgagees.

(Signed) A. H. VANCE.

523 Defendant now offer in evidence the deposition of O. A. Mitscher relative to the value of the Oklahoma City stock of goods, page 205 of the record in the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son. Counsel reads as follows:

O. A. MITSCHER, after being duly sworn, cautioned, and examined, deposes and says:

Q. You may state your name, age, residence, and occupation.

A. O. A. Mitscher; residence, in Oklahoma city; age, 30 years; occupation, merchant.

Q. How long have you been engaged in mercantile pursuits and in what lines?

A. I have been in a store for about thirteen years; been in business for myself about ten years—general merchandising, dry goods, clothing, boots and shoes, and groceries—until I came here.

Q. What lines are you in here?

A. Dry goods, clothing, boots and shoes, notions, carpets, and millinery.

Q. How long have you been in business at this point?
A. Since 22nd of September, 1889.
Q. About what amount in stock do you carry?
A. Our stock runs from $15,000 to $25,000.
Q. Did you know the firm of W. F. Wolf & Son while engaged in business in Oklahoma city?
A. I did.
Q. Are you acquainted with the general character of the goods—lines that they carried—and the market value of the same about the time they closed out of business in Oklahoma city?
A. Only so far as I observed after the business had suspended.
Q. Were you acquainted with the market value and character of the general lines of mercantile goods—dry goods, boots, shoes, hats, caps, clothing, etc.?
A. I suppose I am.
—. I want you to state whether you are.
524 By Mr. MITSCHER: Was I acquainted with the market value of these goods? No. There is a good deal of difference of opinion in regard to that class of goods. Of course, I have my opinion as to that class.
Q. What I want to ask is, Are you capable to judge by your experience and knowledge of the business?
A. I presume I would be.
Q. Were you acquainted with the market value and character of a general stock of goods, including boots, shoes, hats and caps, and clothing and dry goods in the fall and winter of 1890?
By Mr. MITSCHER: Well, I don't understand the question; whether I was acquainted with the market value of the stock generally?
Q. That is it.
A. Yes, sir.
Q. Do you remember the time or about the time that the stock of W. F. Wolfe & Son was closed out under forced sale?
A. I remember the circumstance without knowing the date.
Q. About the date of the sale, as you recall the circumstances, state if you examined that stock of goods and, if so, what was the value of it, perhaps.
A. Well, about that time I went in there and looked it over with the view of buying a certain line or buying some of the goods. I looked them over pretty thoroughly.
Q. Did you go to their place of business—where their stock was?
A. Yes, sir; in their store-room over here.
Q. Well, you may state, to the best of your knowledge, what the value of that stock of goods, at or about that time, was.
A. Well, the time I was in there it was in the possession of Burnham & Munger's man.
Q. Do you know whether he was in possession or whether the sheriff was in possession?
A. I don't know it was he with whom I was talking and who made me prices on the goods.
Q. Well, go ahead and state what you know about the value of the goods.

525 A. My estimate of the stock when I was in there was that $4,000 would be very good value placed upon them.

Q. State the character and condition of the stock, so far as you had observed, as to whether it was old or new.

A. The dry goods were old generally. The boots and shoes were in bad shape; they were small and large sizes; they were generally in poor condition.

Q. What do you mean by their being in bad shape and small and large sizes—not salable?

A. It was old stock generally.

Q. How was the clothing?

A. I did not look at the clothing. I just merely glanced at it.

Q. I will ask you, to refresh your recollection, if a good deal of the clothing was not heavy winter clothing, if you remember.

A. I did not examine the clothing much. I did not examine any. I saw it was not what I wanted.

Q. You made an examination sufficient to make a fair estimate of the value, did you?

A. Well, my estimate of the value was not made from close examination, as it was from a rather general examination of the stock. A person stepping into a store can make an estimate of what is in the store without making a close examination of it.

Q. Could he make a pretty accurate estimate if he is not acquainted with it?

A. No; not accurately. He could come within $500 or $1,000 of the stock.

Cross-examination:

Q. You think $4,000 was a fair price for the entire stock?

A. That was my estimate of what the stock was worth. While talking with Burnham & Munger's man I placed this estimate upon the stock.

Q. Did the fact that this was a bankrupt stock have anything to do with your valuation of it?

526 A. The condition of the stock is—its being a bankrupt stock would have something to do with the valuation put on it; but that was not taken into consideration as much as the condition of the stock.

Redirect examination:

Q. Do you mean to say that the fact that it was going to be sold by the sheriff at public sale had anything to do with your opinion or judgment as to its value?

A. Well, that had something to do with it; that had its bearing on placing its value upon it. After it was bankrupt stock and the condition it was in would naturally have its bearing upon the stock; but the fact that it was going to be put up on forced sale would not have anything to do with my conclusions.

Q. Isn't a fact that you based your opinion upon the general con-

dition of the stock; that the boots and shoes were remnants and the stock was old generally?

A. Yes, sir; that would cover the ground in placing a lower estimate than otherwise.

Q. Was it because of the condition of the stock which caused you to place a value on it as you did?

A. I expect that is the reason that I did it—on account of the condition of the stock—and yet the fact that it was to be forced may have influenced my opinion in regard to it.

Q. What per cent. of the original cost value was the stock of boots and shoes worth; what was their present value at that time?

A. To have cleaned out the stock they would not have been worth over 50%, and I would hesitate to have taken them for over 40%.

Q. The boots and shoes?

A. Yes, sir.

Q. How about the dry goods?

A. The dry goods I would not want, except some staples; of course, there are some things as thread. There were a few sheetings and some thread that—and, if I remember right, some
527 unlaundried shirts that were pretty good; but the dress goods generally was of a class that a person would not want to put into his stock.

Q. What was their value at the time with reference to the original value of the dry goods, to the best of your judgment?

A. I didn't make any estimate of these; didn't look them over close enough to give an opinion.

(Signed) O. A. MITSCHER.

Subscribed and sworn to before me at the place and within the hours first aforesaid.

[SEAL.] RALPH GUTHRIE,
Notary Public.

My commission expires on the 27th day of Dec., 1894.

528 By COUNSEL FOR DEFENDANT: We offer in evidence now the deposition of Thomas B. Ackers, taken in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son on the 22nd day of July, 1891:

My name is Thomas B. Ackers; I reside in Chicago, Illinois; I am 38 years of age, and my business is that of a credit man.

Interrogatory 1st. Will you define the term "credit man"?

Objected to as incompetent, irrelevant, and immaterial, not within the issues, and in no event can it bind the plaintiffs, and no proper foundation laid; which objection was by the court overruled; to which plaintiffs excepted.

Answer. The term "credit man," as understood by myself and with such understanding defined, means this as follows, to wit:

That certain one man in any given business whose whole duty

consists in endeavoring to ascertain the exact amount of credit to which each customer is entitled.

Interrogatory 2nd. What do you mean by "credit"? Answer fully.

Objected to as to last question; which objection was by the court overruled. Exception.

Answer. It is the custom of merchants who have goods, wares, and merchandise to sell to not only dispose of or sell such goods to customers for cash, but also to exchange them for "credit," as we term it—that is, if a customer of ours or one who desires to become a customer is anxious to obtain our goods from time to time and has no money at the time of making the purchase we will exchange goods for his credit. The amount of goods will be regulated by the amount of "credit."

Interrogatory 3rd. Has each customer of the house you represent a certain clearly defined "credit"?

Objected to as last above. Overruled. Exception.

Answer. He has. It is the entire business of this one certain man to exactly measure the "credit" of each of the customers of the house for which he works.

529 Interrogatory 4. Is the position of credit man a responsible one?

Objected to as to last preceding question; which objection was by the court overruled. Exception.

A. it is perhaps the most responsible place in the house, for on the accuracy of the "credit" of each individual customer depends the success or failure of the business.

Interrogatory 5. What house do you represent as credit man? How long have you so represented them? How long have you been a credit man? Where have you been engaged as credit man? How are credits made up in general and in particular? What are your facilities for acquaintance with general and special credits, with the manner of obtaining them, the expense involved in collating this information, the sources from which it is derived, and everything that would tend to show all the details and minutæ by which "credit" as defined by you is made to take the place of cash in the markets of the country and to have a value of its own and intrinsic? State fully.

Answer. I represent the boot and shoe house of M. D. Wells & Co., of Chicago, Illinois; have so represented them for over 14 years; have been engaged as credit man for them, doing business from Chicago, Illinois, during that entire period; have had every possible facility that any man could have to learn all about credits in general and our own in particular for the following reasons: Ours is one of the largest in its line in the United States. Its line, being that of boots and shoes, is a line that must be generally patronized, from the very nature of the article sold. Our house has a most extensive trade all over the entire country, selling to many

thousands of customers, old and new, and constantly building up its trade. Its sales run up into the millions, and we can afford to and do avail ourselves of all the "data" by which the different customers in the whole United States are graded.

It is my custom to come in contact with the credit men of other houses, and I may say that we meet intimately and exchange credits when deemed necessary, besides which we are regular con-
530 tributors to the commercial agencies, such as Bradstreet's & Dun's and others, at great expense to ourselves, and, in addition thereto, we derive special reports, also at large expense, from different local parties, and by all these means and facilities, none of which are denied to me, I have been enabled to give a rating or credit to every customer who deals with us. The amount of money employed in collating this information runs up into the millions; the number of men employed in one way and another in the United States in collating this information runs up into the thousands. The information thus collected is furnished to such houses as ours at very expensive figures; the salary paid to credit men is among the highest paid; and for all these reasons I have been enables during the length of time I have been engaged to determine the rating or credit of our customers as that no bill of goods is ever sold and shipped from our house unless I have seen each particular bill and approved the customer for the amount of that particular bill.

Plaintiffs move to strike out the answer as an advertisement. Overruled. Exception.

Interrogatory 6. How are the different credits of men all over the United States obtained? Answer fully.

Objected to as to last interrogatory. Overruled. Exception.

Answer. There are many different methods, some of which are open and some secret. Perhaps one of the most expensive and extensive is through the Dun agency or the Bradstreets, who put their representatives into every town in the United States and by personal effort learn everything that can be known from each man's own neighbors, surroundings, habits, and methods as to what his credit ought to be.

Another is through the records of liens, mortgages, and transfers; and another, and perhaps the best of all, is to submit the matter to the man's own statement.

Interrogatory seven. What do you mean by the man's own statement?

Answer. I mean this: Each man is anxious to buy goods as cheaply without the cash as with it, for, if this were not so, it
531 would give the cash man too much advantage. Besides, there are times when there is comparatively no cash. Again, each man must buy cheaply in order to sell cheaply. Each man or customer, then, in order to get what goods he needs at cheap figures, is induced thereby to tell you the exact truth about his own busi-

ness affairs and standing and rating, knowing that truth goes farther than money in establishing credit.

Interrogatory 8. Do you mean to be understood as saying that you rely more on a customer's own word than on any other source of information? Answer fully.

Same objection as to last preceding question. Overruled. Exception.

Answer. I do so mean to be understood. We have thousands of customers whose word is their bond. We can rely on it implicitly and are rarely deceived. We on that account come to rely on all our old customers, and sometimes they take advantage of our trust and confidence, and especially so if they are contemplating bankruptcy and getting ready to fail.

Interrogatory 9. Has it been your experience and the experience of what is known as the "trade" that some men deliberately prepare for failure, and for this purpose make false statements to you and to others?

Same objection, ruling, and exception as last above.

A. It is the universal experience of the trade that the only parties who really make false statements are the parties who subsequently fail.

Interrogatory 10. Do the customers understand all this machinery connected with their credit—do they all understand the nature and object of the questions you ask them touching their "credit"—do they understand the liability they impose upon themselves by making false statements?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Interrogatory 11. Do you say that no bill of goods is ever shipped to any customer until you have "O K" the bill, as it is termed?

Answer. Yes, sir; that is true. Not a bill can go out of
532 our house unless I say so.

Interrogatory 12. Does the customer know this and understand it fully?

Objected to as incompetent, irrelevant, and immaterial; which objection is by the court sustained. Exception.

Interrogatory 13. Who is the person in your house to whom the customers are compelled to make their personal statements in order to obtain goods, if any?

Answer. I am that person, and have been for the last 14 years.

Interrogatory 14. Are you acquainted with W. F. Wolfe & Son, formerly doing business at Guthrie and Oklahoma city, in Oklahoma Territory, and have you ever sold them any goods? State fully.

Objected to as last above; which objection was by the court overruled; to which plaintiffs excepted.

Answer. I am acquainted with that firm, and have been ac-

quainted, in a business sense, with them ever since they commenced to do business, in 1880, at Topeka, Kansas. We have sold them goods ever since that time, and when they removed from there to Oklahoma we continued to sell them goods until their failure.

Interrogatory 15. Did you ever sell them goods on credit? Answer fully.

Same objection, ruling, and exception as last above.

Answer. Yes, sir; we sold them goods from 1886 to 1890, and always on credit.

Interrogatory 16. Did you sell them large quantities of goods? If so, why?

Same objection, ruling, and exception as last above.

Answer. We sold them large quantities of goods wholly on credit because their credit was good, although they were always slow pay.

Interrogatory 17. If they were slow pay, why did you continue to sell them goods on credit?

Same objection, ruling, and exception as last above.

Answer. For the same reason that we sell large bills of
533 goods to any firm of good credit, which is this: their statements made them perfectly safe; we supposed them true.

Interrogatory 18. Did you make every effort that a good, prudent, careful business man would make to learn their "credit"?

Same objection, ruling, and exception as to last preceding question.

Answer. We did. I never gave harder work or more careful, painstaking effort to any one credit than to theirs, and when I had exhausted every means known to the commercial agencies to get their true rating I then asked for their own personal "statements," and they gave them to me, and I relied on them until at one time, in 1889, they owed us over $4,000, which they settled by note and closed their account.

Interrogatory 19. What were those statements? Answer fully.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiffs excepted.

Answer. It would be impossible at this late day to answer fully as to all their statements. Some of these statements were made through the agencies, some impersonal, and some by letter, but at the time the largest "credit" was obtained by them they claimed they were worth ($100,000) one hundred thousand dollars. On the strength of the statement, purely and only, I shipped the goods, virtually opening a new account.

Interrogatory 20. Was the statement false or true?

Objected to as last above. Sustained. Exception.

Interrogatory 21. Have you any subsequent statement in writing made to you by them on which they obtained any goods?

Same objection as last above. Overruled. Exception.

Answer. I have.

Interrogatory 22. How many goods did they obtain from you by reason of any false statements? You may attach any "bill of demand" for goods or any "balance" due, and you may attach any written statements, if any, made to you by them; attach to your deposition.

534 Objected to as last above; which objection was by the court sustained in part and overruled in part, and the answer following contains only that part not excluded by the court. Exceptions.

Answer. While I was still relying on the statement that they were worth $100,000 and before they had left Topeka, Kansas, we had sold them some goods, and after removing to Oklahoma we continued to fill their orders on the strength of the "good credit" that their own statements gave them—statements heretofore alluded to—all of which were to the purport that they were worth $100,000, one hundred thousand dollars, and, after they had removed to Oklahoma and we wrote asking for more information, *and* received the following reply:

(Here notary marks letter handed him as being such reply "Exhibit A," and attaches to deposition.)

WITNESS continues: I then O K the bill, as will be seen by referring to the upper right-hand corner, and the goods were shipped on the credit given by the letter itself.

(Here notary marks statement handed him by witness "Exhibit B," and attaches to deposition.)

Our whole account against said firm at that time was $2,489.31, all of which was obtained solely on the credit that they gave themselves, and also relying on the unqualified statement that they would send the $1,000 promised for 1st of August to reduce the old bill and nearly wipe it out, and that the facts as they appeared to be, as contained in their letter, would justify us in shipping the goods.

Interrogatories 23, 24, and 25 and the answers thereto are by the order of the court stricken out; to which defendant excepts.

Interrogatory 26. Had you not relied alone on these personal statements, would you have shipped the goods or any of them?

Objected to as last above. Overruled. Exception.

A. We would not, for when we closed the old account by note, as hereinbefore stated, we did not expect to create a new one and never should have sold them another dollar's worth. * * *

(Signed) THOMAS B. ACKERS.

535 Defendant now offers in evidence Exhibit "A," attached to the deposition of Thomas B. Ackers.

Objected to for the same reasons urged to the introduction of the deposition of said witness; which objection was by the court overruled; to which plaintiffs excepted.

Said Exhibit "A" is in the words and figures following, to wit:

OKLAHOMA CITY, *July* 28, 1890.

Mess. M. D. Wells & Co.

GENTLEMEN: My son, Louis H. Wolfe, sent me your letter, and in reply allow me (the senior W. F. W.) to say to you as follows:

First.	Our standing:	Oklahoma store stock	$17,000
"	" "	City real estate, valued.....	12,000
Second.	" "	Guthrie store stock.....	35,000
"	" "	Real estate Topeka	20,000
			$84,000
Liabilities			27,000
			$57,000

We will send you without fail $1,000.00 on the 1st August and the old bal. due in the middle of August. This is the best we can do, but we look for a fine, lively fall and winter trade. As regards Topeka—well, first, utter dullness; second, so many bankrupt stocks thrown on market, what was the use to stay there? If the above is satisfactory, wire us here to "Oklahoma city O K;" if not satisfactory, we will buy of firm whose representative will be here next week. We will say in conclusion we have only purchased boots and shoes of your firm: we have never acted deceitfully, but continued with you.

Respectfully yours, WILLIAM F. WOLFE & SON.

Endorsed on letter: 7.30 wired ans. Letter received and O K.

Plaintiffs now move to strike out from this deposition that testimony in which he says that this particular statement shows a net balance of $100,000; which objection and motion was by the court overruled; to which plaintiffs excepted.

536 Counsel for defendant reads in evidence Exhibit B, leaving out the items and reading only the footing:

Statement.

CHICAGO, *July* 22, 1891.

M. W. F. Wolfe and Son, Guthrie, Ok. Ter., in account with M. D. Wells & Co.

Dr..... ... . $2,489.31

Defendant now offers in evidence the deposition taken in the case of Henry W. King & Co. *et al. vs.* William Grimes, being the deposition of James K. Burnham, taken at the wholesale house of Burnham, Hanna, Munger & Co., in Kansas City, Missouri, on the 10th day of November, 1891. Counsel for defendant reads as follows:

JAMES K. BURNHAM, of lawful age, being first duly sworn by me, as hereinafter certified, deposes as follows:

Direct examination by Mr. VANDEVEER, attorney for defendant:

Q. State your name, age, residence, and occupation.

A. My name is James K. Burnham. I am forty-eight years of age, and my residence is Kansas City, Missouri, and my occupation is that of wholesale dry goods.

Q. Are you a member of the firm of Burnham, Hanna, Munger & Company, of Kansas City, Missouri?

A. I am.

Q. State who are the members composing that firm.

A. Thomas K. Hanna, Albert H. Munger, Frederick C. Stoepel, Rice R. Miner, and myself.

Q. How long has the firm of Burnham, Hanna, Munger & Company been organized with the members as has just been stated by you?

A. The firm of Burnham, Hanna, Munger & Company was organized in the spring of 1887.

Q. And has continued to do business ever since?

A. Yes, sir; it has ever since that time continued to do
537 business as the firm of Burnham, Hanna, Munger & Company. There has been two changes in that time, however.

Q. When was the last change?

A. The last change was in January, 1890. The firm as now organized and composed has been doing business since January, 1890.

Q. State whether or not you are or were acquainted with the firm of William F. Wolfe & Sons, of Guthrie and Oklahoma city, Oklahoma Territory.

Objected to as incompetent, irrelevant, and immaterial and not within the issues in this case and no proper foundation laid, and the same cannot be binding upon the plaintiffs; which objection was by the court overruled; to which plaintiffs excepted.

A. I am, having met the senior member of that firm, William F. Wolfe, several times since the spring of 1887.

Q. You may state whether or not William F. Wolfe & Son have had any business transactions with the firm of Burnham, Hanna, Munger & Company in the way of buying goods, etc.

Objected to as last above. Same ruling and exception.

A. They have been customers of Burnham, Hanna, Munger & Company almost continuously ever since 1887.

Q. State, if you know, Mr. Burnham, what was the condition of the account of William F. Wolfe & Sons with your firm, or whether they were indebted to your firm in any way in the spring of 1890, running, say, through March and April and up, say, to the 16th of May or about that time.

Same objection, ruling, and exception as last above.

A. The first purchases made in 1890 were made about the middle of May, and they were not owing us anything in the early part of May, 1890.

Q. You may state, Mr. Burnham, who, if any one, of your firm O K'd the bills or orders sold to William F. Wolfe & Sons in the month of May, 1890, and subsequently thereto, if any were sold.

Objected to as last above; which objection was by the court overruled; to which plaintiffs excepted.

A. I was consulted in regard to that account in May, and it is my impression that I O K'd the sale. If not, it was O K'd
538 by some of our people under my instructions.

Q. You may state, Mr. Burnham, whether or not prior to May 16th you had had any talk or conversation with William F. Wolfe, of the firm of William F. Wolfe & Son, regarding their solvency or financial condition.

Objected to as incompetent, irrelevant, and immaterial and on the grounds heretofore stated and hearsay; which objection was by the court overruled. Exception.

A. I had.

Q. When?

Same objection, ruling, and exception as last above.

A. At various times prior to that.

Q. State what those conversations were, if you can recall them. If you cannot recollect the exact words of these conversations or that conversation, give the substance of it as best you can.

Objected to as above; which objection was by the court overruled; to which plaintiffs excepted.

A. I saw him, and we had a conversation, but I can't recall the exact language that was used, but I said to him, "Mr. Wolfe, we are so situated here that we ought to do a large business with their concern, and we would like to know how they were situated financially"—that is, I wanted to know what their basis was for credit, Mr. Wolfe telling me time and time again that Burnham, Hanna, Munger & Company could never lose anything by the firm of W. F. Wolfe & Son; that they were absolutely good and worth from one hundred to one hundred and fifty thousand dollars, and that no depreciation in their property could be figured to make them worth less than from seventy-five thousand to one hundred thousand dollars.

Plaintiffs move to strike out this answer for the reason that it is uncertain, indefinite, and the witness does not pretend to use the words or the sum and substance of the conversation, and does not state when or where it took place or other material fact with reference to it; which motion was by the court overruled; to which plaintiffs except.

539 Q. At the time of this conversation was Mr. Wolfe talking with you in reference to buying goods on credit?

Objected to as to last question; which objection was by the court overruled. Exception.

A. Mr. Wolfe was talking with me for the purpose of establishing a credit or establishing the credit of Wolfe & Son and for the purpose of gaining the confidence of myself and my firm.

Q. You may state, Mr. Burnham, whether or not you believed these statements which he made to you to be true.

Same objection, ruling, and exception as last above.

A. I believed the statements made to me by Mr. Wolfe to be substantially true.

Q. Please state whether or not you relied on these statements and their truthfulness of these statements and believed that he was worth the amount which he had stated and were guided by them in O K'ing these bills or orders and shipping the goods or directing them to be shipped.

Objected to as last above. Same ruling and exception.

A. It was upon this information that I O K'd these shipments and believed the concern to be absolutely good for their wants. Had it not been that I believed that, I should not have O K'd the orders, but I believed the firm from the statements that had been made to me to be absolutely good for what they ordered.

Q. You may state whether or not subsequent to May 16th, 1890, you received any statement from William F. Wolfe & Son in writing regarding their financial condition.

A. On June 4th, 1890, we received from William F. Wolfe & Son an order for a considerable bill of goods, and before shipping these goods we requested from them a statement in writing as to their financial condition. This they sent under date of June 7th, which reached us June 9th.

Witness hereupon produces the original letter referred to and requests that a copy thereof be attached to this his deposition
540 and marked Exhibit "A" and made a part hereof, which was done.

The letter above referred to is attached hereto and marked Exhibit "A" and initiated by the notary public taking these depositions as Exhibit "A," with his initials, "J. M. O.," and attached hereto and made a part of the deposition of this witness.

A. (continued.) I will mail the original letter, of which Exhibit "A" is a true and correct copy, to our attorney, Mr. S. L. Overstreet, at Guthrie, Oklahoma, so that it will be there in time for this trial. Prior to the receipt of this letter, on June 7th, 1890, of which Exhibit "A" is a copy, we had put up the order made by William F. Wolfe & Sons and had it ready for shipment, but held it in the house until after the receipt of the letter of June 7th.

Q. You may state, Mr. Burnham, whether or not it was upon the strength of the statements made in the letter of June 7th, 1890, as to the financial standing of William F. Wolfe & Sons that you then

directed the shipment of the goods which they had ordered and which they subsequently ordered.

Same objection, ruling, and exception as last above.

A. It was.

Q. State whether or not you would at any time after May 16th, 1890, — shipped or sold to Wm. F. Wolfe & Sons any orders on credit had you believed them to be -solvent or any other or different financial condition than what they had represented themselves to be.

Objected to — last above. Same ruling and exception.

A. No, sir; I would not.

Q. You would not have done so?

A. No, sir.

Q. From May 16th, 1890, and subsequent thereto to what extent did Burnham, Hanna, Munger & Company sell to Wm. F. Wolfe & Sons?

Objected to as last above; which objection was by the court overruled; to which plaintiffs excepted.

541 A. Commencing with May 16th, 1890, we continued to sell goods to Wm. F. Wolfe & Sons, as I have before stated, upon the strength of the statements and representations made to us by them as to their financial condition and solvency, goods amounting in all to five thousand eight hundred and eighty-eight dollars and sixteen cents ($5,888.16), an itemized account of which I here present to the notary public, and ask that the same be marked Exhibit "B" and made a part of my deposition.

The itemized account above referred to is attached hereto, marked Exhibit "B," and initialled with the initials of the notary public, "J. M. O.," and made a part of the deposition of this witness.

Q. From May 16th, 1890, what, if any, sums or amounts of money were paid to Burnham, Hanna, Munger & Company by William F. Wolfe & Sons on account of the goods you sold them?

Objected to as to last preceding question; which objection was by the court overruled; to which plaintiffs excepted.

A. They had paid us between May 16th, 1890, and December 15th, 1890, cash amounting to seven hundred and ninety-nine dollars and fifty-five cents ($799.55), and returned goods to us amounting to two hundred and eighty-nine dollars and fifty-four cents ($289.54), which made a total credit to their account of one thousand and eighty-nine dollars and nine cents ($1,089.09).

Q. Leaving a balance, then, due of how much?

Objected to as last above. Same ruling and exception.

A. Four thousand seven hundred and ninety-nine dollars and seven cents ($4,799.07). We had also received in the meantime one check on December 5th for five hundred dollars ($500.00) and De-

cember 10th one check for five hundred dollars ($500.00). One of these checks, the one dated December 8th, which we received December 10th, for five hundred dollars ($500.00), was protested; the other was not, as they had written on the check, on its face, in red ink, "Protest waived." These checks were deposited with us here in our bank, and they were returned, as there was no funds in the bank on which they were drawn to the credit of Wm. F. Wolfe & Sons to pay them. These checks I here produce and hand
542 the same to the notary public, and request that he make copies of each of the same to be attached to this my deposition as a part thereof.

The checks above referred to are in words and figures as follows, to wit:

Objected to as incompetent, irrelevant and immaterial, and not the best evidence; which objection was by the court sustained; to which defendant excepted.

A. (continued). These original checks I will mail to our attorney, Mr. S. L. Overstreet, at Guthrie, Oklahoma. The check dated the 6th of December was received here, possibly, about December 4th.

Q. When, if at any time, Mr. Burnham, did you or your firm first receive any information regarding the insolvency of the firm of William F. Wolfe & Son, or that the statements made by them to your house were untrue?

Objected to as to former questions; which objection was by the court sustained. Exception.

A. About December 15th, 1890, we received a telegram from our attorney, Mr. S. L. Overstreet, of Guthrie, Oklahoma Territory.

Q. Will you please produce the telegram and have the notary made a copy of same and attach same to your deposition as part thereof?

A. Yes, sir.

The telegram above referred to is hereupon handed to the notary public and is by him marked "Exhibit One" and initialled with his initials, "J. M. O.," and is in words and figures as follows, to wit:

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

A. (continued). I will mail this original telegram, along with the other papers in this case, to our attorney, S. L. Overstreet, at Guthrie, Oklahoma.

Q. State whether or not on or at any time since May 15th, 1890, William F. Wolfe and Son have paid or caused to be paid any sum or amount of money whatever to Burnham, Hanna, Munger & Company on account of what they owed.

Same objection, ruling, and exception as above.

A. Since December 15th they have never paid for any of
543 the goods or never paid anything on account; neither themselves or any one on their account.

Q. Upon receipt on December 15th, 1890, of the telegram above referred to from your attorney, Mr. S. L. Overstreet, what, if anything, did you or your firm—that is, the firm of Burnham, Hanna, Munger & Company—do with reference to the goods which you had sold to William F. Wolfe & Son?

Objected to as incompetent, irrelevant and immaterial, and not the best evidence; which objection was by the court overruled; to which plaintiffs excepted.

A. We authorized Mr. S. L. Overstreet, our attorney, at Guthrie, Oklahoma, and our Mr. W. J. Milligan, who is one of our employees, to proceed to recover the goods we had shipped to Wolfe & Son, an amount in value equal to their unpaid account, and if the goods could not be recovered to bring suit against W. F. Wolfe & Son for damages to the amount of the value of the goods or of such goods as could not be recovered, and gave them full authority to act for us and in our name and in all ways they should deem advisable to recover the amount of our account unpaid at that time.

Q. From and after December 15th, 1890, and after the instructions so given to Mr. Overstreet and Mr. Milligan who has represented the firm of Burnham, Hanna, Munger & Company in looking after these matters?

Objected to as last above. Same ruling and exception.

A. Mr. Overstreet, our attorney, and Mr. Milligan.

Q. What, if anything, do you know personally and aside from what they may have told you as to what they have done in the premises?

Same objection, ruling, and exception as last above.

A. Personally all I know about it is that we have been put to some considerable expense, which we have had to pay, and that we have also received back into the house a portion of the goods which we sold and shipped to William F. Wolfe & Son between May 16th and August 4th, 1890.

Q. You may state, Mr. Burnham, whether or not you saw recovered and were returned to Burnham, Hanna, Munger & Company; the goods, I mean, that were so recovered were examined by you personally.

A. Yes, sir.

544 Q. You saw them?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiffs excepted.

A. I did.

Q. Did you also examine them?

Same objection, ruling, and exception as last above.

A. I did.

Q. You may state whether or not, Mr. Burnham, any goods thus recovered and returned to your house in Kansas City—whether or

not amongst them you found any goods which had not been sold and shipped by Burnham, Hanna, Munger & Company to William F. Wolfe & Company at Guthrie and Oklahoma city, Oklahoma Territory.

Same objection, ruling, and exception as above.

A. I did not.

Q. How long have you been in the dry-goods business, Mr. Burnham?

A. I have been in the wholesale dry-goods business between 29 and 30 years.

Q. At what places?

A. At Detroit, Michigan, and at Kansas City, Missouri.

Q. And during that period have you been personally engaged in such branches of the business which familiarize you with the goods, the qualities, etc.?

A. Yes, sir.

Q. And the values?

A. Yes, sir.

Q. For how long a time have you been so acquainted?

A. Continually since I have been in this business I have been handling goods such as are usually kept in a wholesale dry-goods house, and I have had experience both in the buying and selling of goods, so that I am posted as to the quality and price.

Q. You may state, Mr. Burnham, what in your opinion was the market value of the goods recovered from William F. Wolfe & Son and returned to your house.

Objected to as incompetent, irrelevant, and immaterial;
545 which objection was by the court sustained; to which defendant excepted.

Q. What would the goods recovered and returned to your house amount to, allowing for them the same price at which they were charged to William F. Wolfe & Son when shipped by your firm to them?

Same objection, ruling, and exception as last above.

Q. Please explain, then, why you fix the market value of the goods received at fourteen hundred and twenty-two dollars and ninety-three cents ($1,422.93). What is the cause of the depreciation?

Same objection, ruling, and exception as last above.

Q. You may state, if you know, Mr. Burnham, whether or not there are any wholesale dry-goods houses in Guthrie or Oklahoma city, in Oklahoma Territory.

Objected to as last above. Overruled. Exception.

A. I do not know of any.

Q. What is the nearest wholesale dry-goods market to that locality?

Same objection, ruling, and exception as last above.

A. The nearest dry-goods market of any importance is Kansas City, Missouri, I think.

Q. You may state what, if any, difference there would be between the market value of goods at Oklahoma city or Guthrie, Oklahoma Territory, and Kansas City, and how that difference, if any, could be determined.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

The next two questions and answers thereto are by the court not permitted to be read to the jury; to which defendant excepts.

Q. Now, Mr. Burnham, after recovering the goods which you say have been returned to your firm what would the firm of William F. Wolfe & Son still be owning your firm—that is, the firm of Burnham, Hanna, Munger & Company—for goods not recovered, and also for depreciation in value of those which were recovered?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained as to part of the answer and overruled to part. Exception. The answer as read is:

A. They would owe a balance on account for goods which
546 we were unable to recover of $2,827.61.

Q. Mr. Burnham, can you and will you furnish to the notary public taking these depositions an itemized statement or list of the goods recovered or so returned to your house which were recovered back from William F. Wolfe & Son?

A. I will.

Witness hereupon produces the itemized list above referred to, which he hands to the notary public, and the same is marked Exhibit "C" One and initialled with the initials of the notary public, J. M. O., said exhibit being attached hereto and made a part of the deposition of this witness.

Q. State whether or not you are acquainted with one Charles A. Peake.

A. I am.

Q. Where does he live and what business is he engaged in at the present time, if you know?

A. He lives in Kansas City, Missouri, and during the years 1887, '88, '89, and '90 he was in the employ of Burnham, Hanna, Munger & Company as a salesman.

Q. Was he your head salesman?

A. He was a general salesman.

(Signed) JAMES K. BURNHAM.

Sworn and subscribed to before me on the day within the hours and at the place in that behalf first mentioned.

JOHN M. ORR,
Notary Public.

[SEAL.]

Here counsel for the defendant offers in evidence the original letter of which a copy is contained in the deposition, and which said original is identified as Exhibit "A" to the deposition of said James K. Burnham, and which letter was also identified by the said James K. Burnham as having been received from Wolfe & Son.

Plaintiffs admit that the letter is in the handwriting of William F. Wolfe, but object to the letter as incompetent, irrelevant, and immaterial, not within the issues in this case, no proper foundation laid, and in no way binding upon any of the plaintiffs in this case,

547 and it would not even in an action against the Wolfes sustain or tend to sustain any legal or proper averment or allegation in the affidavit for an attachment and because no proper foundation is laid, and we object to the political portions of it and the personal portions of it as utterly incompetent and immaterial in this case; which objection was by the court overruled; to which plaintiffs excepted.

Said letter is in the words and figures following, to wit:

EXHIBIT "A," J. M. O.

Received Jun- 9, .890.

OKLAHOMA CITY, *June* 7, 1890.

Messrs. Burnham, Hanna, Munger & Co., Kansas City, Mo.

GENTLEMEN: Your esteemed favor to hand, and in reply to your inquiry as to our financial standing will say this:

Stock here	$13,500
3 lots, Main St., 75 — front, 140 feet deep; building 75 — front, 60 feet deep; 6 living-rooms attached and out-buildings	12,000
	$25,500
Stock in Guthrie	30,000
Real estate in Topeka	20,000
	$75,500
Indebtedness, about	22,000
	$53,500

I came here last week of November, 1889; have been here pretty steady since. My health was indifferent; have recovered my old-time vigor; have not had a bad cold since I came here. My wife's health has also been excellent, and we have both become attached to this locality. We have a cottage ½ mile west of town on Reno road, on my brother-in-law's claim, (160) acres, Judge D. A. Harvey, and Judge Harvey, my wife's brother, would have been governor if old Ben. Harrison was a man and not an old ass. The whole community was for "Harvey" for governor.

The store in Guthrie is the best and most complete in the whole

Territory, and my son, Louis H. Wolfe, will be manager.
548 Business in Topeka is dead, unless to fool away time and money. Anyway, my son never liked Topeka, as he is anti-prohibition and democratic in his views and a very active Presbyterian, as his grandfather, his father-in-law, Judge Clark, of Topeka, is, who, by the way, is also the principal stockholder in the Topeka Gas Co. Please excuse these personalities. We think both Okl. city and Guthrie have an excellent future before them. Certainly the opening of the Sac, Fox, Poncas, Iowas, Osage reservations and the strip by Oct., or, the farthest, November, this year, will throw a very large trade into Guthrie, and we here have a very fine trade from the Pottowatomies, Seminoles, Chickasaws, Wichitas, &c., &c., coming 75 miles to trade here. Hoping all will be satisfactory, &c.,

Very truly, &c., WM. F. WOLFE & SON.

[Seal of John M. Orr.]

Defendant now offers in evidence the two checks identified by the witness James K. Burnham in the deposition just read, together with the protest of the check dated December 8, 1890, which is attached to said check.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiffs excepted.

Counsel reads:

GUTHRIE, OKLAHOMA, 12, '6, 1890. No. —.

Guthrie national bank

pay to Burnham, Hanna, Munger & Co. or order $500.00, five hundred & $\frac{00}{100}$ dollars.

W. F. WOLFE & SON.

On the face of the above check appears an interlineation in red ink directly above the words "Burnham, Hanna, Munger & Co." as follows: "Protest waived," and on the back of said check appears the following endorsements, to wit: "For deposit with the Citizens' nat'l bank to the credit of Burnham, Hanna, Munger & Co.;" also the following endorsement: "For collection and credit of First national bank, Arkansas City, Kas. H. P. Farrar, cash.;" also
549 the following endorsement: "For collection for account of Guthrie nat'l bank, Guthrie, O. T. A. G. Herron, cashier;" also the following endorsement: "Collection and credit account of Citizens' National Bank of Kansas City, Mo. W. M. Seeger, cashier;" all of which above endorsements on the back of said check are erased with a lead pencil.

The following is a copy of the check referred to, dated Dec. 8, 1890.

OKLAHOMA, IND. TER., *December 8th*, 1890. No. —.

Oklahoma bank.

pay to Mess. Burnham, Hanna, Munger & Co. or order $500, five hundred dollars.

WILLIAM F. WOLFE & SON.

On the face of said check above set forth appears the following in red ink: "Protested Dec. 12th, 1890. A. S. Welsh, notary public." Attached thereto is the notice of protest, and on the back thereof are the following endorsements, to wit: For deposit with the Citizens' national bank to the credit of Burnham, Hanna, Munger & Co.; also the following endorsement: "For collection and credit of First national bank, Arkansas City, Kas. H. P. Farrar, cashier;" also the following endorsement, which was erased with lead pencil: "Collect and credit account of First national bank, Kansas City, Mo. W. H. Seeger, cashier."

Defendant now offers in evidence the letter dated December 8, 1890, purporting to be signed by W. F. Wolfe & Son to Burnham, Hanna, Munger & Co., the same date that this check which was protested was signed.

Objected to as to former offers. Overruled. Exception.

It is admitted that the letter was written by William F. Wolfe.

OKLAHOMA CITY, *December* 8, 1889.

I have just received notice from the bank at Guthrie that, my son not having the exact amount of $500 in the bank, they returned the check to you unpaid. This is simply outrageous. My son was in the Pottowatomie reservation, southeast of Guthrie. He was sure the amount would be deposited in his absence, and these false villians in the bank returns the check to you, and you must believe we are a set of asses or fools. In a business career of fifty
550 years I have not seen — sens-less dunces as these one-horse banks make. I enclose a check in place of the one send back. Please return the unpaid check to my son at Guthrie. Please hurry up the goods. We need some of them much. Thanks for all favors, &c.

Truly, &c., WILLIAM F. WOLFE & SONS.

Endorsed on it: Received December 10.

By Mr. ELLIS: Read the date of the protest of the check sent that day.

It states on the fact, Protested December 12, 1890. The certificate says, Oklahoma city, Oklahoma Territory, December 12, 1890. Please take notice that a check for $500, dated December 8, 1890, by William F. Wolfe & Son, &c.

Defendant now offers in evidence the telegram identified by the deposition of James K. Burnham, and a copy of which purports to be set out in his deposition. We offer the original exhibit.

Plaintiffs object to this on the same ground as to the other exhibits; which objection was by the court overruled; to which plaintiffs excepted.

Received at 10 West Fifth street, Kansas City, Mo., Dec. 15, 189–.
Dated Guthrie, O. T. — m., standard time, 15.

To Burnham, Hanna, Munger & Co., K. C.:

Wolfe and Son chattel mortgage both stock to creditors for twenty-two thousand and surrender possession. You are not included.

S. L. OVERSTREET.

The telegram above set forth is written on one of the ordinary blank forms of the Western Union Telegraph Company.

Defendant here reads, from page 244 of the record in the Jaffray case, from the testimony of A. H. Vance, which is with reference to the amount of indebtedness that he had knowledge of here at the time that he took this chattel mortgage.

Counsel reads:

Q. Had you ever taken a chattel mortgage from Wolfe & Son before this?

A. No, sir.

Q. What caused you to take that mortgage at that time?

551 A. When I came here at that time I found that they had been sued for a small amount in Oklahoma city, which they were unable at that time to pay. Apprehending that there would be an execution levied on their property which would destroy their business is the reason I took the mortgage at that time to secure the debts.

Q. You demanded it at that time?

A. I did.

Q. And you apprehended some process at that time?

A. I did.

Q. You knew that they owed some other creditors at that time?

A. I did.

Q. Did you know the amount?

A. I did not.

Q. Didn't W. F. Wolfe tell you that they were owing creditors and about the amount?

A. He told me at the time or showed me on a little book. He said, I think, $14,000. *He said, I think, $14,000.* I asked him some question and he said something about $14,000.

Q. That amount was given you at the time you took this instrument?

A. Yes, sir.

Defendant now offers the certified copies of the depositions taken in behalf of John G. Miller & Co. in a case brought in the district court of Shawnee county, State of Kansas, of John G. Miller, James B. Watt, and E. Miller, partners as John G. Miller & Company, *vs.* William F. Wolfe and Louis H. Wolfe, partners as William F. Wolfe & Son; A. H. Vance, D. A. Harvey, J. T. Clark, the Bank of Topeka, Topeka, Kansas, and the Central National Bank of Topeka, Kansas, which is covered by the stipulation.

Counsel reads:

FRANK H. DEAN, of lawful age, being first duly sworn to testify the truth, the whole truth, and nothing but the truth in the above-entitled cause, deposes and says:

552 Q. State your name, age, and place of residence.

A. Frank H. Dean; age, 29; residence, Chicago, Cook county, Illinois.

Q. In whose employ are you?
A. John G. Miller & Co., doing business at Chicago, Illinois.
Q. Are they the plaintiffs in this action?
A. They are.
Q. What are your duties with this firm?
A. My duties are to manage the credit department.
Q. How long have you been employed as credit man with this firm?
A. Eighteen months (18).
Q. Do you know William F. Wolfe & Son, of Guthrie and Oklahoma?
A. I do.
Q. Have you ever met them personally?
A. No, sir.
Q. When did your busness relations with them first begin?

Objected to as incompetent, irrelevant, immaterial, not within the issues in this case, and no proper foundation laid, and that the testimony, even in an action against Wolfe & Son, — tend to sustain any lawful allegation in the writ of attachment, and there is nothing in the paper which can in any way bind the plaintiffs in this case; which objection was by the court overruled. Exception.

A. In July, 1890, we received an order from them through our salesman, Mr. D. W. Pell.
Q. Before going into that define your duties as credit man.
A. My duties are, after receiving an order for goods, to investigate the financial and credit standing of the parties and to either accept the order and ship the goods or refuse it, as I may decide upon information obtained.
Q. You say you received an order from William F. Wolfe & Son in July, 1890?

Objected to as last above; which objection was by the court overruled; to which plaintiffs excepted.

553 A. Yes, sir.
Q. What did you do in relation to it?
A. I enquired of Bradstreet and Dun as to their financial standing, and, not being satisfied with their report, I wrote to William F. Wolfe & Son August 13, offering them a cash discount.
Q. Have you the original letter that you mailed to William F. Wolfe & Son on the date August 13, 1890?
A. Yes, sir.
Q. How did you come by it?
A. They returned it to me, together with their letter dated August 22, 1890, signed William F. Wolfe & Son, evidently written by the senior Wolfe.
Q. I call your attention to this letter bearing date August 18th, 1890, to which you have just referred, and hand it to the notary and have him mark it Exhibit "A," and also will ask you, Mr. Dean, to mark it "Exhibit A," in pencil, and sign your name under the words "Exhibit A" for identification.

Q. Has this been done?

A. It has.

Q. I now call your attention to the letter which you say you received, signed William F. Wolfe & Son, August 25th, 1890, and will likewise ask to have that letter marked for identification "Exhibit B." Has this been done?

A. It has.

Q. What was done about this order from Wm. F. Wolfe & Son, after receiving this letter from the firm?

A. We decided from the statements made and contained in that letter that he was worthy of the credit asked, and *that* on the following day shipped the goods.

Q. Did you have any other communications from the firm regarding their financial standing?

A. No, sir.

Q. Did you ship them any further goods?

A. Yes, sir.

554 Q. How many in amount?

A. Thirteen hundred seventy-eight ($1,378.00) dollars' worth.

Q. How many goods, then, all told, did you ship them after receiving this letter from Wm. F. Wolfe & Son on August 25, 1890, between that date and the date of the last shipment?

A. Twenty-four hundred forty-five and $\frac{50}{100}$ dollars ($2,445.50).

Q. What was the amount of the first shipment?

A. Ten hundred sixty-seven and $\frac{57}{100}$ dollars ($1,067.57).

Q. What was the occasion of these subsequent shipments?

A. One was an order sent in by our salesman, Mr. Pell, and the rest were mail orders.

Q. What were the dates of the various shipments made by plaintiffs to Wm. F. Wolfe & Son, beginning with the first?

A.—

August 26, 1890, dated November 1st, due March 1st....	$1,067.50
September 5th, 1890, four months, due January 5, 1891..	324.00
October 6, 1890, dated November 1st, due March 1, 1891..	911.50
October 23, 1890, 60 days, due December 22, 1890.....	4.75
Oct. 25, 1890, 60 days, due December 24, 1890.....	17 50
Oct. 28, 1890, 60 days, due December 27, 1890.....	25 00
October 30, 1890, 60 days, due December 25, 1890.....	5 00
November 1st, 1890, 60 days, due December 30, 1890....	10 50
November 11, 1890, 4 months, due March 11, 1891.....	7 50
November 22, 1890, 60 days, due January 21, 1891.....	20 00
November 26, 1890, 4 months, due March 26, 1891.....	12 50
December 6, 1890, 60 days, due February 4, 1891.....	23 25
December 8, 1890, 4 months, due April 8, 1891.....	16 50

Q. Were any of these goods returned?

A. Yes, sir.

Q. How many?

A. In all thirty-six and $\frac{25}{100}$ ($36.25) dollars.

Q. Were any of them ever paid for?

A. No, sir.

Q. How much, then, was the amount due from Wm. F. Wolfe & Son?

555 A. Twenty-four hundred nine and $\frac{25}{100}$ ($2,409.25) dollars.

Q. I will call your attention now to the schedule Exhibit "A," attached to the plaintiffs' petition in this cause, and will ask you if the lot numbers and number of articles therein named correspond with the lot numbers and the number of articles of the goods shipped by the plaintiffs to the defendants Wm. F. Wolfe & Son at various times between the 25th day of August, 1890, and the 8th day of December, 1890, excepting such as were returned?

A. Yes, sir; this is a correct list of the goods shipped by the plaintiff- to the defendants Wm. F. Wolfe & Son.

Q. What effect did the receiving of the letter marked Exhibit "B," signed by William F. Wolfe & Son, have upon you, Mr. Dean, touching the matter of credit?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. Did you believe the statements therein to be true, or did you not?

A. I believed them to be true.

Q. State whether or not in granting the firm credit you relied upon the statements.

A. I did, solely.

Q. Did you make an independent investigation when each of these orders were received?

A. No, sir.

Q. Why not?

A. From the fact of having received the letter we did from Wm. F. Wolfe & Son, dated August 22, 1890, we gave a general line of credit upon the facts as stated in their letter. That line of credit would have continued had not some circumstances occurred to stop it.

Q. Did you say you made inquiries at the agencies of Bradstreet and Dun?

A. Yes, sir.

Q. I call your attention to a paper marked "The Mercantile Agency," "R. G. Dun & Co." on the back, with date 7th-2-1890, and ask what that is.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. Where did you get that paper?

556 Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. Of this city?

Same objection, ruling, and exception as last above.

—. When?

Same objection, ruling, and exception as last above.

Mr. Cook: I pass that to the notary, and ask to have it marked Exhibit C and attached to the deposition.

Same objection, ruling, and exception as last above.

Q. Did you receive any other report from the agency?

Same objection, ruling, and exception as last above.

Mr. Cook: I will pass that to the notary, and ask him to have it marked Exhibit D and attached to the deposition.

Q. Did you receive any other statement?

Same objection, ruling, and exception as last above.

Q. When did you receive it?

Same objection, ruling, and exception as last above.

Mr. Cook: I will pass that to the notary, and ask to have it marked Exhibit E and attached to the deposition.

Q. I call your attention to a letter dated 7, 12, 1890, signed W. A. Thomas, cashier. Have you ever seen this letter?

Objected to as last above. Overruled. Exception.

A. Yes, sir.

Q. When did you first see it?

A. August 15, 1890.

Q. How did you receive it?

A. Through the mail, addressed to our firm, John G. Miller & Co.

Mr. Cook: I pass that to the notary, and ask to have it marked Exhibit F and attached to the deposition.

Q. I call your attention to a letter apparently written by yourself, dated July 24, 1890. Did you write the letter?

A. I did.

Q. What did you do with it?

A. Sent it to the Bank of Topeka.

557 Q. How did you get it back?

A. It was returned to me by the bank.

Q. When did you receive it?

A. On July 28, 1890.

Q Did you receive it yourself?

A. Yes, sir.

Mr. Cook: I pass that to the notary, and ask to have it marked Exhibit "G" and attached to the deposition.

Q. I call your attention to another letter, apparently written by yourself. Did you ever see it before?

A. I did.

Q. Did you write it?

A. Yes, sir.

Q. What did you do with it?

A. I mailed it, addressed to the Bank of Guthrie, Indian Territory.

Q. How did you get it back?

A. In due course of mail, addressed to Jno. G. Miller & Co.

Q. When did you receive it back?

A. July 9, 1890, as nearly as I can make out. I am certain it was before I wrote the letter marked "A."

Q. Was the writing which appears on the lower left-hand corner of this letter—"Do not know much about them; they just moving here; think they bank with Capital City bk."—on this letter when you received it?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. Was that on when you sent it?

Same objection, ruling, and exception as last above.

Mr. Cook: I pass this last-named letter to the notary, and ask to have it marked Exhibit H and attached to the deposition.

Q. Who else, if any one, besides yourself has to do with the credits of the plaintiff?

A. Mr. John G. Miller, the senior member of the firm.

Q. Did he have anything to do with the credits?

A. He did not.

558 Q. What effect, if any, Mr. Dean, would it have produced upon your mind had you known August 25, 1890, that Wm. F. Wolfe & Son were owing considerably more than $24,000?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. State whether or not you believed the statement in the letter of August 22, 1890, marked Exhibit "B," that Wm. F. Wolfe & Son had the two largest and best assorted stocks in Oklahoma Territory.

Objected to as last above. Overruled. Exception.

A. I did.

Q. Did you believe the other statement in their letter concerning their financial and social standing?

Same objection, ruling, and exception as last above.

A. I had no reason to believe otherwise than what they stated was the truth.

Q. I will call your attention to a statement in this letter marked "Exhibit B" that Wm. F. Wolfe & Son had received a postal card from the plaintiffs to the effect that their order had been received and would be attended to. What was the object of sending that postal card?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. What is a part of the attention which orders receive after having come into the possession of the house?

A. When the parties asking credit are new customers we thor-

oughly investigate their financial and credit standing before shipping them any goods.

Q. What do you mean by mail orders?

A. Orders that are received direct from the parties by mail.

Q. Where there are material differences between facts stated in agency reports and statements made by the parties themselves in their own handwriting, which do you generally consider is entitled to belief?

A. I most invariably give the parties the benefit of the doubt, believing they should know their business better than other people, and knowing at times that mercantile agencies get prejudiced reports.

559 (Signed) FRANK H. DEAN.

Defendant here offers in evidence letters attached thereto marked Exhibits "A" and "B," and the same being the letters identified by the witness Frank H. Dean.

Objected to as incompetent, irrelevant, and immaterial. No proper foundation is laid, and they cannot in any event bind the plaintiffs in this case, and claimed to have been written to John G. Miller & Co., who are not in any way interested in this suit, and it does not appear that the statements were ever communicated to anybody who is directly or indirectly connected with or interested in this case; which objection was by the court overruled; to which plaintiffs excepted.

Said letters are in the following words and figures, to wit:

560 John G. Miller. Emanuel Miller. James B. Watt.

John G. Miller & Co., wholesale clothing, 194, 196, & 197 Fifth Ave.

CHICAGO, *Aug.* 18, 1890.

Wm. F. Wolfe & Son, Guthrie, I. T.

GENTLEMEN: Your order given our Mr. Pell duly to hand, and has had our attention. Regarding it, we have to say that we have been unable to get much information of your financial standing at Guthrie, and we do not feel like granting you the long terms given you by Mr. Pell, until we know you better. In all probability you are perfectly good for this amount, but as we above stated our information is so limited that we do not see how we could be justified in shipping you the order. We are, however very anxious to ship this order, and have decide- to make you this proposition, viz. 10 % discount, for cash on receipt of goods. This is a most liberal discount. being 4 % more than is generally allowed. and if you are in position to take advantage of it, it will make a very profitable deal for you. Whether this meets with your approval or not, we will be pleased to hear from you by return mail and if agreeable to you. and you accept our proposition, we will take great pleasure in giving the order our prompt attention, and trust that when next you are disposed to favor us with an order. that we will be better informed regarding your financial responsibility.

Yours respectfully, JOHN G. MILLER & CO.

Received Aug. 25, 1990.

JOHN G. MILLER & CO.

Compared by me with original.

HARPER S. CUNNINGHAM.

Dictated by D.

Exhibit "A."

561 Copy.

OKLAHOMA CITY, *August 22nd*, 1890.

Mess. John G. Miller & Co.

GENTLEMEN: My son. Louis H. Wolfe. who is managing our Guthrie store, purchased a bill of goods from your agent. He in due time received a postal card, "that the order had been received, and had due attention." This morning my son sends me your letter in which you inform him we have no satisfactory rating &c as an old business man, I must confess I am at loss to understand this way. If you did not want the order why did you accept it? And now write us that you cannot ship it. Here is the 22nd. Aug. We want some of the goods at Guthrie, have indeed promised some, now you refuse. Put yourself in our place and how would you feel? . . . Here is our statement:

Our stock in Guthrie	$36,000
Our stock in Oklahoma city	17,000
Our real estate in Topeka, Kansas	20,000
Our real estate in Oklahoma city	12,000
	85,000
Our liabilities	24,000
	61,000

We paid out last month nearly $7,000.00, pretty good for dull times. Now. gentlemen. if you propose to act square. ship the goods. Wire us at once. thus. "Yes." Or if not. "No" and we will buy somewhere else. . . . Turn over.

562 We understand and can comprehend some things. but you must admit as business men. that your action is remarkable. and we must in some way have made an enemy. who (or enemies) is trying to injure us; of course our competitors here in Oklahoma city and in Guthrie are not in love with us; we have the two largest. best assorted stocks in the Territory, and we are doing the business. As to our social standing: My son's father-in-law Judge Clark of Topeka. Kansas, is the principal stockholder of the gas-works. worth in his own name at least $200,000. My son-in-law Judge A. H. Vance is worth from $75 to $100,000. and my brother-in-law Judge David A. Harvey is worth at least $150,000. My character and my son's are stainless. For ½ century, I have been a member of the M. E. church. and for nearly the same period a Royal. Arch Mason. I have held every office in our church except bishop and presiding elder. I have given our church during the

above period $50,000, and sister churches fully half the above amt. . . . I have always paid my debts. never wronged any one. and I cannot understand how a first. class firm like yours could send my son such a letter.

Respectfully &c. WILLIAM F. WOLFE & SON.

(Literal copy, punctuation, periods, and all.)

H. H. COOK.

563 Defendant now offers in evidence the deposition of James B. Watt, taken in the case of John G. Miller & Company *vs.* W. F. Wolfe & Son *et al.*, the case last above referred to and identified, in the State of Kansas, in the county of Shawnee, under the stipulation filed in the case.

JAMES B. WATT, being called as a witness by the plaintiffs and being duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause above entitled, deposes and says:

Q. State your name, age, and place of residence.

A. James B. Watt; thirty-seven years; No. 3213 Groveland Ave., Chicago, Illinois.

Q. Are you one of the plaintiffs?

A. Yes, sir.

Q. What is your line of duties in connection with the plaintiffs' business?

A. I principally attend to the manufacturing, and have general supervision of the stock and the getting out of the orders.

Q. Did you have anything to do with the shipments to Wm. F. Wolfe & Son, of Guthrie, by the plaintiffs, between August 25 and December 8, 1890?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. Yes, sir.

Q. What?

A. The orders are all referred to me, and many times I look over the orders to see that everything is in good, nice, clean shape, which would give me a degree of familiarity with the goods shipped.

Q. When did you hear of the failure of the firm of Wm. F. Wolfe & Son or that they were in trouble?

A. I cannot state the date.

Q. About when?

A. About the 15th or 16th of December, 1890.

Q. What was done?

A. We immediately wired you (Mr. Cook) to go at once
564 and look after the matter.

Q. Did you take any steps personally to investigate the matter?

A. None further until I went to Topeka and met you.

Q. What date did you meet me there?

A. The Monday before Christmas, about the 22nd of December.

Q. Do you recollect whether I had been to Oklahoma at the time of that meeting?

A. You had.

Q. What steps were taken at Topeka with reference to the matter?

A. After talking the matter over with you we concluded to go around and see the parties interested in the mortgage and ask them to allow us to take our goods back.

Q. Did we do that?

A. Yes, sir.

Q. Who did we see?

A. Mr. Knowles, of the Central national bank.

Q. Do you remember his first name?

A. I think it is Edwin.

Q. What was said to Mr. Knowles by yourself or by me in your presence with reference to the matter, as nearly as you can remember?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

Q. What did he say in so many words, if you can remember?

Same objection, ruling, and exception as last above.

Q. Was anything said whether or not his bank held a mortgage for the goods?

A. Yes, sir.

Q. What did he say about it?

Same objection, ruling, and exception as last above.

Q. Do you remember whether any notes were exhibited or not?

A. Yes, sir.

Q. What was said about them?

A. He showed us the notes signed by these parties for the amount of their claim.

Q. This was at the Central national bank?

565 A. Yes, sir.

Q. Who were present at this interview with Mr. Knowles?

A. Yourself and myself and Mr. Knowles.

Q. Anybody else?

A. Not that I remember of.

Q. What further steps did we take in connection with the matter?

A. We went from the Central bank to the Bank of Topeka and there saw Mr. Mulvane, the president, and Mr. Thurston, the cashier.

Q. What was said to them about the matter?

A. After stating our business, the president and cashier had a short consultation together and said they could not allow us the privilege of taking our goods away.

Q. Do you remember in what form the demands were in that were served upon these parties?

A. Yes, sir.

Q. In what form was the demand?

A. Written.

Q. What did it contain?

A. A complete list of our claim against Wm. F. Wolfe & Son and a request for the goods.

Q. You say a "complete list of our claim." Please be more specific on that point.

A. It was a list of the articles in dollars and cents, giving also the numbers of items and the lot numbers.

Q. What action do I understand you the Bank of Topeka took upon the matter through Mr. Mulvane and Mr. Thurston?

A. They refused our request.

Q. What further steps were taken in the premises?

A. We afterwards went to the gas company's office.

Q. Who did we see there?

A. Mr. J. T. Clark.

Q. What was said to him about the matter?

A. We presented our claims as to the others, and he also refused us. He referred us to his attorney, Mr. Vance. He stated
566 that he regretted that there was any trouble, and only hoped the thing could be arranged satisfactorily to both parties; but further than that, in regards to making any settlement of the matter, he would have to refer us to his attorney, Mr. Vance, in whose hands he had placed the matter.

Q. Were any steps taken to see Mr. Vance?

A. Yes, sir.

Q. What?

A. We called at his office to see him and found him out of the city.

Q. Where was he reported to have gone?

A. To Guthrie, Oklahoma Territory.

Q. What further steps were taken in the premises?

A. We then made preparations to go to Guthrie, taking the next train on the Santa Fé for that place.

Q. What steps were taken in Guthrie in the matter?

A. We went to the store of Wm. F. Wolfe & Son to, if possible, inspect the stock. We were at first refused entrance, but finally, by the courtesy of an attorney from Kansas City, who had an officer in charge of the dry-goods part of the store, we succeeded in getting in. We at once began to identify our goods. I took each lot as I found it and called off to Mr. Cook, who put it down on a duplicate bill which he had in his possession, and, after calling off, I took particular pains to see that Mr. Cook had put each item down as called off.

Q. Was there any interference in the progress of our work at that time?

A. Yes, sir.

Q. What was it?

A. Mr. Harvey came and objected and said that he would not allow anything of that kind, claiming to be acting for the mortgagees.

Q. Did we finally succeed in getting through the stock pretty fully?

A. We went through the stock as thoroughly as we could in the time we had to do it in. Mr. Harvey came a second time and ordered us to vacate the room.

Q. Up to the time that Harvey came the second time and
567 ordered you out, what goods had you found in the store of Wm. F. Wolfe & Son, at Guthrie, Oklahoma, which the plaintiffs had shipped to Wm. F. Wolfe & Son after the 25th of August, 1890?

Lot number.	Article.	Price.
2624	1 suit	4 00
2611	3 suits	12 50
2443	5 suits	15 00
2579	2 suits	13 00
2642	6 suits	11 00
2635	3 suits	14 00
2592	3 suits	11 50
2613	5 suits	10 00
2677	4 suits	10 00
2573	4 suits	11 00
2687	6 suits	8 00
2652	4 suits	8 00
2561	2 suits	7 50
2559	2 suits	7 00
2689	1 suit	2 50
2641	3 suits	5 50
2650	3 suits	10 00
4820	1 pant	3 00
2650	2 pants	3 00
2384	1 pant	3 00
4596	1 pant	3 00
2361	1 pant	3 00
4824	1 pant	4 50
6532	3 pants	4 50
4752	6 pants	3 00
4631	6 pants	3 50
2443	1 pant	3 25
4632	5 pants	3 50
4742	3 pants	3 25
4888	1 pant	2 50
4814	6 pants	2 00
4625	8 pants	3 00
2182	1 pant	2 25
2369	2 pants	2 25
6337	1 pant	2 25
3058	2 pants	2 25
4523	1 pant	2 50
4760	1 pant	2 50
4678	1 pant	2 50

4657	3 pants	2 00
3548	1 suit	8 00
4853	1 pant	3 50
4712	4 pants	4 00
4819	2 pants	5 00
4850	2 pants	3 75
5055	5 overcoats	5 50
5239	4 overcoats	6 50
5224	1 overcoat	12 50
5214	4 overcoats	8 00
5049	3 overcoats	4 50
5011	6 overcoats	2 00
5169	5 overcoats	4 00
5257	8 overcoats	4 50
2571	4 suits	8 00
2601	3 pants	4 37

568

1 special overcoat		16 50
1 special suit, white and black stripe		25 00
2687	1 pant	2 75
2592	2 pants	4 50
2561	1 pant	2 50
2641	2 pants	1 75
2559	3 pants	2 50
2642	2 pants	3 50
2650	3 pants	3 25
2624	3 pants	1 25
2611	1 pant	3 87
2635	1 pant	3 50
2652	1 pant	2 75
2689	1 pant	87
2694	1 pant	4 25

Q. You say, Mr. Watt, that you handled each of these articles over in the store?

A. Yes, sir.

Q. What did you say about Mr. Cook (myself) putting the numbers of the goods on bills, etc.?

A. I identified the goods, counted them, and called them off to Mr. Cook, who put them down on a duplicate bill which he had in his possession, and I watched him to see that it was put down as I called off.

Q. I now show you a paper. Did you ever see it before? (Hands witness a paper.)

A. Yes, sir.

Q. What is it?

A. It is a duplicate bill of a part of the goods shipped Wm. F. Wolfe & Son.

Q. Did you see this at Guthrie on the occasion of our visit there?

A. Yes, sir.

Q. Was that one of the bills used in checking off the goods?
A. It was.

Mr. Cook: I will ask to have the notary mark this "Exhibit J" for identification.

Q. I now show you another paper. Did you ever see that before?
A. Yes, sir.
Q. When?
A. At Guthrie.
Q. How was it used?
569 A. It was used in checking off the goods identified by me.

Mr. Cook: I will ask to have the notary mark this "Exhibit K" for identification.

Q. I now show you another paper. Did you ever see that before?
A. At the same time and place.
Q. How was it used?
A. In checking off the goods.

Mr. Cook: I will ask to have the notary mark this "Exhibit L" for identification.

Q. With reference to lot number 2601 and some of the others I notice on the bills that they seem to be lot numbers of suits and you have spoken of them as used in identifying pants. I will ask what is and has been the system of plaintiffs in marking coats, pants, and vests?
A. The coats, pants, and vests of each suit are marked the same lot number.
Q. Then the lot numbers of a suit would appear on each garment the same, as I understand it?
A. Yes, sir.
Q. How, then, do you arrive at your valuation of pants alone where they are odd garments of broken suits?
A. We have a regular figured division list which we go by and which is universally used by wholesale clothing houses.
Q. Did you find any goods in the store at Guthrie that had no lot number on them that you identified as goods shipped by your house to Wm. F. Wolfe & Son after the 25th of August, 1890?
A. Yes, sir.
Q. How were you able to identify them?
A. By the lot No. and pattern of the goods, the trimming, and the general make of the garment.
Q. Are you conversant with the various pieces of cloths that are used by your firm in the manufacture of clothing?
A. I am.
Q. State how much of the clothing shipped by you to Wm. F. Wolfe & Son was manufactured by the plaintiffs under your personal supervision.

570 A. All of it.

Q. I show you a typewritten paper, Mr. Watt, and below the typewritten matter on the second page are pencil lines with signatures. Did you ever see it before?

A. Yes, sir.

Q. Was that paper or a copy of it used in making the demands upon any of the defendants in this case?

A. It was.

Q. Was this paper or a copy or both used in that way?

A. It was so used and a copy left with each party.

Mr. Cook: I pass this paper to the notary and ask to have it marked "Exhibit M" for identification.

Q. After you were driven out of the store by the man Harvey, at Guthrie, what further was done in the premises?

A. We took the next train for Oklahoma city.

Q. What was done there by yourself or myself to your knowledge?

A. We went to the store of Wm. F. Wolfe & Son and tried to gain admission, but could not get in.

Q. Why not?

A. The store was locked.

Q. Anything on the door?

A. The curtains were down and I do not remember whether there was a card on the door or not.

Q. What further was done?

A. We went to the office of an attorney, Mr. Guthrie.

Q. Did we see him?

A. Not at his office.

Q. Did we see him in the city?

A. That night at the hotel.

Q. What was said in regard to this matter?

A. We made a request of him to be allowed to go in the store and identify our goods, and he refused.

Q. What did he say that you took as a refusal?

571 A. He said he would not allow us to go in.

Q. What else was said?

A. Turning to Mr. Cook, he said he had in his mind a little business transaction in which Mr. Cook was attorney in Kansas, and he did not propose to allow us to get a single thing that would help us in our matter; that he was looking after the interests of the mortgagees in that Wolfe stock and did not propose to allow anything to be done that would give us any assistance in the matter; that if we wanted to get into that store we could break in with a replevin writ, and that at our peril.

Q. Were we finally able to get into the store at Oklahoma city?

A. No, sir.

Q. How long have you been in the woolen and clothing business?

A. I have been in the woolen and clothing business for twenty years.

Q. Have you sold clothing in Chicago at wholesale?
A. I have.
Q. Have you sold clothing in various States of this country?
A. Yes, sir.
Q. What States?
A. Missouri, Kansas, Illinois, Wisconsin, Nebraska, and Iowa.
Q. Are you familiar with the value of clothing of the kind you saw in this Wm. F. Wolfe & Son stock at Guthrie, and of the kind that was sold by your firm to Wm. F. Wolfe & Son on or after August 25th, 1890, and were you so familiar with it December, 1890?
A. Yes, sir.
Q. Did you at that time know the value of the goods at Guthrie and at Topeka, Kansas?
A. I did.
Q. From your knowledge of the value of ready-made clothing and your knowledge of this clothing in particular, what would you say was the value of this clothing at Guthrie and Oklahoma city during December, 1890?

572 A. The specific value as I have heretofore named in giving the list of goods identified at Guthrie, and I further say the specific value as set out in Schedule A, attached to plaintiffs' petition, is the true value of these goods at Guthrie and Oklahoma city.

Q. What difference, if any, would there be in the value of these goods at Topeka, Kansas, at the same time?
A. Practically none. I should have been very glad to have taken our goods at that time and call them worth all they were scheduled at in this case.
Q. If goods are properly cared for, would the values have remained practically the same during December, 1890, and January, 1891?
A. They would.
Q. Were there any inquiries made for Mr. Vance at Guthrie on reaching that point?
A. There was.
Q. Did we find him?
A. No, sir.
Q. Did you ever meet Mr. Vance?
A. I did not.
Q. Did you ever meet D. A. Harvey?
A. I did not.
Q. Did you make inquiry for him?
A. I did.
Q. Where did you learn he was?
A. At Washington, D. C.
Q. Were any other demands *demand* by you for these goods or any of them than those above specified?
A. There were.
Q. Upon whom?
A. Mr. W. L. Harvey, brother of D. A. Harvey; at least he claimed to be a brother of D. A. Harvey, the defendant.

Q. What was said to this man in making that demand?

A. We told him that we had come down there to get our goods and would like to have his permission to get them; this he refused.

Q. What did he say in refusal?

A. He said under no circumstances would we be allowed to take the goods.

573 Q. Did he claim to be acting for himself or others in the premises?

A. He claimed to be acting for others.

Q. For whom?

A. For the mortgagees.

Q. When was this?

A. This was the 22nd or 23rd of December, 1890, the Tuesday before Christmas.

Q. Where was it?

A. In Guthrie, Oklahoma Territory.

Q. Whereabouts in Guthrie?

A. At first in the back room of Wm. F. Wolfe & Son's store, where we were identifying the clothing, and afterwards on the side street running past the store.

Q. In this conversation with Mr. Guthrie at Oklahoma city was anything said about his having charge of the store there?

A. Yes, sir.

Q. What was said?

A. He said he had charge of the store.

Q. In that conversation were any reasons given by yourself for desiring to inspect the stock?

A. Yes, sir.

Q. What reasons?

A. We said we wanted to see how many goods bought of John G. Miller & Co. were in the store; that we understood quite a quantity were there, and if none of our goods were there we did not want to go to any trouble or expense or to put them to any expense by bringing suit for them.

Q. What was his reply?

A. His reply was as above stated, that he did not propose to let us see inside that store.

Q. In reference to the conversation with Mr. Knowles and Mr. Mulvane, at Topeka, Kansas, at the time of demanding the goods, was anything said by yourselves to these parties about our reasons for desiring or the grounds upon which we made the demands?

A. There was.

574 Q. You may state it.

A. My recollection is that Mr. Cook stated that we had been deceived in the financial strength of Wm. F. Wolfe & Son; that we thought we had a right to retake the goods, and that their mortgage furnished no defense against our rights.

Q. Was this stated before or after the formal demand was served upon them?

A. Before.

Q. Was their refusal before or after?
A. After.
(Signed) JAMES B. WATT.

Defendant here offers in evidence Exhibit F, attached to the foregoing deposition.

By the COURT: I think those communications are incompetent. Exception.

Defendant now offers in evidence Exhibit G, attached to the foregoing deposition, which plaintiffs object to as incompetent, irrelevant, immaterial, no proper foundation laid, and could not in any event bind any of the parties to this action, besides the letter itself, if there was a letter written by J. W. Thurston, is not such an one as is admissible in this case; which objection was by the court overruled; to which plaintiffs excepted.

Defendant now reads said Exhibit "G," in the following words and figures:

"EXHIBIT G." Charles H. Wells, Notary Public.

CHICAGO, *July* 24, 1890.

Bank of Topeka, Topeka, Kansas.

GENTLEMEN: Will you have the kindness to give us, in strict confidence, any information you may have at your disposal regarding the financial strength of Mess. Wm. F. Wolfe & Son, doing business in your town, also at Oklahoma city and Guthrie, I. T.?

We have an order from them, amounting to $1,400, which, if we ship, will not mature before March 1st, '91. From your knowledge of their affairs would you believe to credit them with this amount a good business risk? We would like to have you state also, if you please, their net worth over and above all liabilities; also
575 their reputation for meeting bills promptly, and any other information that you may be able to give us that will assist us in determining the amount of credit they are entitled to. Do you believe them to be successful business men? We realize that this would be putting you to some trouble, but beg to assure you it is fully appreciated and at any time we will be glad to reciprocate. We will hold your reply to this inquiry in strict confidence and we would ask that you kindly consider ours in a like manner. Thanking you in advance for your courtesy and trusting that you will answer at your earliest convenience, we beg to remain,

Yours truly, JOHN G. MILLER & CO.

Credit dept., July 24, 1890.

JOHN G. MILLER & CO.

Dict. by D.

On the back of the above letter is written the following:

TOPEKA, *July* 26, '90.

John G. Miller & Co.

GENTLEMEN: We understand that their business is moved en-

tirely from North Topeka and are doing business only at Oklahoma.

I don't know just how much property they control, but think they would be considered slow pay.

Yours, J. W. THURSTON, *Cr.*

Received Jul- 28, 1890.

JOHN G. MILLER & CO.

Defendant now offers in evidence the deposition of Charles A. Stacy on behalf of Rice, Stix & Company, taken in the case of Rice, Stix & Company *vs.* W. F. Wolfe & Son, under the stipulation filed in the case.

Plaintiffs object to said depositions for all the reasons stated in their objection to the deposition of Mr. Dean just read, and object to each and every question on the same ground; which objection was by the court overruled; to which plaintiffs excepted.

576 My name is Charles A. Stacy; my age is 35 years; I reside in the city of St. Louis, State of Missouri, and I am employed in the credit office of Rice, Stix & Co., the plaintiffs in this suit. I have held said position with said firm for the past nine years.

I have known the plaintiffs for many years; the defendants I know only in a business way and through correspondence. I will state that I am in charge of the credit department of the firm of Rice, Stix & Co. now, and have been connected with same for 9 years, and one of my duties in that position is to examine all orders and requests for goods from purchasers and would-be purchasers coming to the house by mail direct, through our salesmen, or when the parties make application in person.

In the spring or summer—early part of the summer—of 1890 the defendants W. F. Wolfe & Son, of Oklahoma Territory, purchased goods of plaintiffs to the value of the claim sued on in this action. There was some correspondence prior to the sale with the defendants, and in reply to our enquiry of them the defendants wrote us a letter, dated May 7, 1890, signed Wiiliam F. Wolfe & Son, which letter I have marked "Exhibit A" and make it a part of this my deposition. In answer to a letter of ours the defendants wrote us by letter of the date of May 12th, 1890, which letter is marked Exhibit "B" and made a part of this my deposition; and during the summer of 1890 we received from defendants another letter containing a property statement showing the value of their property, also their liabilities. This letter is marked Exhibit "C" and made a part of this my depos tion. I recollect distinctly all these letters. We let defendants have goods and credit upon the representations made by them in their letter, Exhibit "C," hereto attached. We, of course, supposed that the statements made in that letter as to the value and character of their assets and their liabilities *was* true, and we relied upon that statement and the statements in the other letters when we sold and shipped goods to them. Those representations induced us to credit defendants. We concluded from their

said statements that they were solvent and abundantly able to meet their bills. If defendants had not made these representations to us we would not have credited them. We relied upon their
577 said statements and representations as being true when we sold and shipped our goods to them. If we had supposed for a moment that their statements were untrue we would most certainly have refused to give them the credit we did.

(Signed) CHAS. A. STACEY.

Defendant here offers in evidence the letters attached to the deposition of Charles A. Stacey, marked Exhibits A, B, and C.

Plaintiffs object for all the reasons stated in their objection to previous letters and depositions, and ask proof who the letters are written by.

Testimony of Louis H. Wolfe.

LOUIS H. WOLFE, being recalled as a witness for defendants, testified as follows:

Direct examination by Mr. HORNOR:

Q. Please state if you know whose handwriting that is. (Here counsel for defendants hands witness Exhibit- A, B, and C referred to in the depositions of Charles A. Stacey and attached thereto.)

A. I couldn't say positively whose handwriting this is.

Q. Whose do you say it is?

A. I think it is my father's.

The objections of plaintiffs is overruled. Exception.

Counsel reads letters in evidence in the following words and figures:

EXHIBIT "A."

OKLAHOMA CITY, *May* 7, 1890.

Mess. Rice, Stix & Co.

GENTLEMEN: Your esteemed favor at hand, and in reply will say we are somewhat astonished at your communication, but answer as follows: Last November my health was so poor (kidney trouble—tendency to Bright's disease) that my family and physician advised a change, either Arkansas hot springs or possibly Oklahoma would do. My son Louis had started business here, having secured (3) lots, built a business house 75 feet front, 60 feet deep, six living-rooms attached in rear. 25 feet he rented to a drug concern, so we occupy 50 x 60 feet & four rooms in rear. Myself and wife
578 came here and the change has done me good. My son Louis took charge of our concern in Topeka and has managed it since. My son Fred, my wife, and my clerk are here, and self thrown in as needed in emergencies. My son Louis is my partner. My son Fred clerks at $25 per month, and I give him a share of profits from time to time. My clerk here gets $35. Our stock invoiced three weeks ago, retail, $16,731.00; wholesale, round numbers, $12,000. Our (3) lots and buildings we consider cheap at

$12,000. We are on Main street, and have the best location for business in town. Our Topeka stock, my son writes me, will invoice from $35,000 to $40,000. My residence in Topeka is cheap at $12,000; my son Louis's, $13,000. My residence and my son's stand on acre lots, not 25 feet, but an acre each, and will in the near future be worth double the money.

Our indebtedness is about now $27,000, the heavy part payable in the fall months. Myself and wife are here boarding at my sister-in-law's, and sometimes we have dinner at our fashionable hotel, Weaver, here in town at 25 p'r meal. My son boards there and my cleark at a cheap boarding-house, so our expense is light. My partner and son Louis keeps house in Topeka and lives economically, and I, the senior, never knew anything but economy. My lifetime record is clear, straight, honest from alpha to omega. I am a Royal Arch Mason, and my record is A No. 1. On account of poor crops, mild winters, and carrying a stock in Topeka of about 75 to $80,000, we have been a little slow, and who is there now doing business who has not been slow? Point out any one. One thing more, we have outstanding small accounts amounting in Topeka to about 86 or $700, six or seven hundred dollars. Here [in this new country we trust not at all, not a penny].* Now, gentlemen, if you do not want to sell us let us know and we will buy of others. With best wishes for your personal welfare and prosperity to your firm, I remain,

Truly yours, &c., WILLIAM F. WOLFE & SON.

(* NOTE BY STENOGRAPHER.—The line above in which the hyphen is run through part of the sentence is not intended to be erased, but simply emphasized.)

579 EXHIBIT B.

OKLAHOMA CITY, *May* 12, 1890.

Mess. Rice, Stix & Co.

GENTLEMEN: Your favor at hand. My son writes me he sent you a check and the balance he would soon also forward. We will remit this week, and we think we have, and shall continue to remit promptly. You are aware, we presume, that in all new countries money is scarce, and this is no exception, but we are on the eve of prosperous times here in Oklahoma city. In a short time we will have deeds and a city government and city improvements, which will circulate money among the laboring class; property will change hands, and we shall have good times. Your inquiry, "who we owe"—we owe M. D. Wells & Co., Chicago; Browning, King & Co., New York; Sweet, Dempster & Co., Chicago; Burnham, Hanna, Munger & Co., Kansas City; J. V. Farwell & Co., Chicago; Tootle, Hosea & Co., St. Joe; Rosenheim, Levis & Co., St. Louis. We owe my son-in-law, Mr. A. H. Vance, judge of district court of Topeka; also my brother-in-law, Judge D. A. Harvey, Topeka, Kansas. (My son Louis also married the oldest daughter of Judge Clark, principal stockholder

of Topeka Gas Works & Coke Co.) All the above firms continue gladly to sell us. Judge Clark is worth $200,000.

Very truly yours, WM. F. WOLFE & SON.

Written on top of letters: Please do not draw on us. We will remit promptly, and it is no use to draw. We do not hoard money, but pay as quick as possible.

W. F. W. & SON.

EXHIBIT C.

OKLAHOMA CITY, *July* 29, 1890.

Mess. Rice, Stix & Co.

GENTLEMEN: In compliance with your request we send you check for $150.00; the balance due you will soon follow. We paid out this month nearly $6,000.00. Pretty good for a new country; don't you think so?

Very truly, &c., WILLIAM F. WOLFE & SON.

We want canton flannels, bleach-, unbleached; brown, slate,
580 red, blue, fancy, double-face wool flannels, heavy jeans, cassimeres, dress goods, all wool, half wool; blankets, shirtings, plushes, velvets, ginghams, wool hose, notions, &c*o*.—a general assortment. If you want this kind of bill of us, let us know. We want a bill of about $2,000—general bill, 90 days—but we do not want it till Oct. 1st, 1890. Here is our report:

Oklahoma store stock	$17,000
" real estate	12,000
Guthrie stock	35,000
Topeka real estate	20,000
	$84,000
Liabilities	22,000
	$62,000

Defendant here offers in evidence the deposition of William H. Romaine, taken before Theodore S. Nye, notary public, in the city of New York city, on July 22d, 1891, in the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son.

Plaintiffs object for the reasons urged in their objections heretofore made to former depositions of a similar nature and to each and every question and answer therein contained; which objection was by the court overruled. Exception.

Counsel reads:

Deposition of William H. Romaine, taken before Theodore S. Nye notary public, at the office of Miller & Phillips, attorneys, No. 20 Nassau street, New York city, on Wednesday, July 22d, 1891, between the hours of 9 o'clock a. m. and 6 o'clock p. m.

Said witness, being first duly sworn to testify the truth, the whole truth, and nothing but the truth relating to the cause or matter for which the deposition is to be taken, says:

I reside at Jersey City Heights, New Jersey. I have now and for the last 20 years have had charge of the credit department of the plaintiffs in this action, E. S. Jaffray & Co. I do not know either of the defendants personally. As having charge of the credit department of the plaintiffs, it is my duty to ascertain as to whether credit should be given and goods sold and delivered to parties desirous of
581 purchasing same from plaintiffs. On or about July 25th, 1890, the plaintiffs received a letter from the defendants, which letter was placed in my hands.

(Witness shown paper.)

Q. Is the paper now shown you, dated Oklahoma city, July 19th, 1890, said letter?

A. It is. (Paper offered in evidence and marked Exhibit A, July 23d, 1891, T. S. N.)

Immediately on receiving said letter I caused the same to be answered, said answer being dated July 25th, 1890. (Paper shown witness.)

Q. Is the paper now shown you, dated New York, July 25th, 1890, a copy of said letter?

A. It is. (Paper offered in evidence, marked Exhibit B, July 23d, 1891, T. S. N.)

Q. Did plaintiffs receive an answer from defendants to said letter of July 25th, 1890?

A. They did; and that letter came into my hands as having charge of the credit department of plaintiffs. (Paper shown witness.)

Q. Is the paper now shown you, dated Oklahoma city, July 29th, 1890, said letter?

A. It is. (Paper offered in evidence and marked Exhibit C, July 23d, 1891, T. S. N.)

The plaintiffs very shortly thereafter received certain orders from defendants for certain merchandise, which orders plaintiffs filled. I having charge of said transaction, said goods were delivered to defendants; said sale and delivery was made through me, relying upon said representations contained in said letter of July 29th, 1890, Exhibit C, of this date. I believed said statements contained therein to be true; said sale and delivery was made relying wholly thereon, and but for said statements plaintiffs would not have sold and delivered the goods in question to defendants. (Paper shown witness.)

Q. Is the paper now shown you a statement containing the dates of the time of the sale and delivery of said goods to defendants?

A. It is. (Paper offered in evidence and marked Exhibit D, July 23d, 1891, T. S. N.)

Q. State the amount of the indebtedness now due from
582 defendants to plaintiffs for said merchandise.

A. It amounts to five thousand two hundred and fifty dollars and eighty-six cents, and interest.

Q. Have plaintiffs ever sent defendants a bill or bills for the goods in question?

A. Yes. I personally mailed the bills therefor, addressed to defendants, with postage thereon prepaid.

Q. Did defendants ever object to said bills or criticise same, so far as you are aware?

A. They did not.

Q. In the usual course of business, would any objection or criticism thereon have been brought to your attention?

A. Yes; and I never received or heard any objection thereto. The goods were shipped to defendants by plaintiffs immediately after the dates specified in the statement annexed hereto, marked Exhibit D of this date, July 23d, 1891, T. S. N.

(Signed) WM. H. ROMAINE.

Subscribed and sworn to before me—

THEODORE S. NYE,
Notary Public.

Defendant now offers in evidence Exhibits A, B, and C, identified by the witness.

Objected to as to Exhibit B because it is a copy and there is no foundation laid for its introduction. To A and C the same objection is made as to former exhibits of this character; which objection was sustained as to Exhibit B, but overruled as to Exhibits A and C; to which exceptions were taken.

EXHIBIT A.

OKLAHOMA CITY, *July* 19, 1890.

Mess. E. S. Jaffray & Co.

GENTLEMEN: In reply to your circular just at hand will say we are running the largest and best-assorted dry-goods store in the Territory. We have in Guthrie front 25 feet; deep, 130 feet; basement and first floor. Governor rooms above, 2d story; supreme
court room ditto, &c., &c. In Okl. city we have 50 feet front,
583 60 feet deep; general stock. Now, we want you to send us samples of dress goods (newest styles), half and all wool; single and double surrah silks, ribbons, percale samples, and, indeed, samples of a general first-class goods you keep. We want a line of dress goods, &c., &c., and we want something different from what our competitors have. You can have an order (we cannot come) amounting to 2 or $4,000; first order about $2,000, and then as we need up to about 4 or $5,000. We look for immense emigration and fine fall and winter trade. Please send samples as early as convenient.

Very truly, &c., WM. F. WOLFE & SON.

Endorsed: Wrote for state., 7, 25, '90. Return to cr. office, S. C. 231.

EXHIBIT C.

OKLAHOMA CITY, *July* 29, 1890.

Mess. E. S. Jaffray & Co.

GENTLEMEN: Your esteemed favor at hand, and in reply will say as follows:

Oklahoma City stock	$17,000
" " real estate	12,000
Guthrie stock	35,000
Topeka real estate	20,000
	84,000
Liabilities	27,000
	$57,000

We have purchased goods of you when in Topeka, Kans. Your traveling agent knows us favorably for years (Mr. Thompson). We have semi-annually received from your house circulars, statements of prices, &c., &c. We always admired your house for your nice, clean, fresh stock. We have houses here and in Guthrie who buy of the same houses we do. We do not want to quarrel over the same class of goods with them; it is unpleasant and unprofitable. We prefer having goods of our own at our own fair prices without all the little mean dodges of one-horse competition. We did a good business in Topeka, but so many bankrupt stocks put on the
584 market we felt like moving where business could be done.

We now have the largest and best store in the Territory, 130 feet front and basement, while upstairs governor's office and all the officials, supreme court rooms, &c.; best location and best building (sandstone) in city. The Indians—Iowas, Sacs, Fox-s, Osages, Pottowatomies, Poncas, &c., &c.—all have taken their land allotments in severalty and cash to be paid this fall. This will give Guthrie a big trade. Also the Cherokee strip will open by the 1st Oct., 125 miles long, 65 miles wide. This again will add to the large trade of Guthrie. Then you see we had ample grounds for opening so large a store with so large a general stock in Guthrie. Later Oklahoma city will share in this, as the Arrapahoes, Cheyennes, Chickasaws, Wichitas, Seminoles will take their lands in severalty and a pile of cash. We can add much to this, but this will suffice. If you want a big slice of our fall trade send samples to select from or notify us to the contrary, and we will make other arrangements.

Very truly, &c., WILLIAM F. WOLFE & SON.

Exhibit D is also offered in evidence.

NEW YORK, *July* 22, 189-.

Mess. W. F. Wolfe & Son, Guthrie, Oklahoma, to E. S. Jaffray & Co., Dr., 350 Broadway.

1890.			
Aug. 25.	To mdse., Nov. 1		563 65
26.	"		217 22
"	"		786 72
Sept. 3.	"		123 43
8.	"		310 41
9.	"		841 07
"	"		738 76
"	"		607 01
10.	"		30 50
11.	"		143 34
19.	"		100
Oct. 1.	"		240 05
Nov. 29.	"		548 50
			$5,250 86

585 Defendant now offers in evidence the deposition of John T. Chumasero, taken on behalf of John V. Farwell Co., in the case of Farwell & Co. *vs.* W. F. Wolfe & Son, under the stipulation.

Plaintiffs object for the same reasons urged to the preceeding depositions; which objection was by the court overruled. Exception.

Counsel reads:

The said JOHN T. CHUMASERO, being duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows:

Q. What is your name, age, and occupation?

A. John T. Chumasero; upwards of fifty years; merchant.

Q. Where do you reside?

A. In Chicago, county of Cook and State of Illinois.

Q. What relation do you sustain to the John V. Farwell Company?

A. I am secretary of the company and am also head of the credit department.

Q. How long have you been engaged in that capacity?

A. About twenty-five years.

Q. What are your duties as head of the credit department?

A. To pass upon all credits—that is, to determine whether merchants applying for credit are worthy of credit, and to direct the shipping of goods bought by those to whom we give credit. I also have general oversight of the other members of the credit department who are my assistants and who also make credits.

Q. Are you acquainted with the firm of W. F. Wolf & Son, formerly doing business at Oklahoma city, Indian Territory?

A. I am acquainted with them in a business way.

Q. You may state whether or not the firm of W. F. Wolf & Son ever had any business transactions with John V. Farwell & Company.

A. They did.

Q. What were those transactions?

A. The purchase of goods from John V. Farwell & Co. in the year 1890.

Q. I hand you a document and ask you what it is.

586 A. It is a statement of the account of W. F. Wolf & Son with John V. Farwell & Company. (Statement hereto attached, marked Exhibit A.)

Q. You may state, Mr. Chumasero, what sum, if any, the firm of W. F. Wolf & Son was indebted to John V. Farwell & Co. on the 20th day of December, 1891.

A. They were indebted to the John V. Farwell Company in the sum of five hundred twenty-three dollars and ninety-one cents ($523.91). (Statement hereto attached, marked Exhibit A.)

Q. For what was that indebtedness incurred?

A. For goods, wares, and merchandise sold by John V. Farwell & Co. and shipped to W. F. Wolf & Son at their request.

Q. I hand you here certain other documents and ask you to identify them.

A. These are duplicate bills of the goods which were sold and shipped to W. F. Wolfe & Son, showing the items purchased.

(Plaintiffs' attorney hands these duplicate bills to notary and asks that they be attached to this deposition and marked as Exhibits B, C, D, E, and F.)

Q. You may state whether or not all of the goods mentioned in these duplicate bills were sold and shipped to W. F. Wolfe & Son.

A. They were.

Q. I will ask you whether or not this amount of five hundred twenty-three dollars and ninety-one cents ($523.91) or any part thereof has ever been paid.

A. It has not; it is still an existing indebtedness from W. F. Wolfe & Son to John V. Farwell Company.

Q. I hand you here three documents for your identification and ask you what they are.

A. They are duplicate receipts received from the Atchison, Topeka and Santa Fe Railroad Company for packages containing the goods set forth in duplicate bills, concerning which I have testified a moment ago.

(Plaintiffs' attorney also hands these in evidence and asks that they be attached as Exhibits G, H, and I.)

Q. I will ask you when the goods contained in these du-
587 plicate bills were shipped.

A. Some of them were shipped on March 13, 1890; some

of them on October 10th, 1890, and some of them on October 14th, 1890.

Q. Were these goods that you have testified to delivered on board the cars at Chicago?

A. They were.

Q. I hand you here three other documents and ask you what they are.

A. They are what we call shipping tickets.

Q. You will please state what is the function of these shipping tickets, and how they are made up.

A. These shipping tickets are made up by the general salesman, and show the date of purchase, the name and address of the purchaser and shipping directions, the general salesman, the department salesman, and the number of packages. After being made up they are brought to the credit office for the check of some one of the credit men.

Q. What is the mark up in the left-hand corner of each of these tickets?

A. It is the letter "F."

Q. What is the purport of that letter "F"?

A. It is the signature or mark of Mr. French, one of the assistant credit men, which was put there at my direction.

Q. What is the meaning of the letter?

A. It is to instruct the shipping clerk to ship the goods in the packages marked on the back of these tickets.

Q. Will you please state whether or not the packages described in these shipping tickets are the same packages referred to in the duplicate shipping receipts heretofore testified to as containing the goods described in the duplicate bills?

A. They are.

Q. You may please state what became of the original bills, of which Exhibits B, C, D, E, and F, hereto attached, are duplicates.

A. They were sent by mail to W. F. Wolfe & Son.

Q. You may state whether the John V. Farwell Company, or you on their behalf, ever sent to W. F. Wolfe & Son state-
588 ments of their account with the firm of John V. Farwell & Co.?

A. We did.

Q. Has any objection ever been raised to these statements?

A. None ever has.

Q. Please state what reason the house had for shipping any goods at all to W. F. Wolfe & Son, defendants in this case.

A. They were sold and shipped to them at their request and upon their order.

Q. You may state, Mr. Chumasero, how long you have been in the business of making credits?

A. For more than twenty-five years.

Q. Please state, if you have any idea, what amount of credits you have passed upon.

A. I cannot state that, but it would be a great many millions of dollars.

Q. Will you please state whether or not you are acquainted with the custom of John V. Farwell Company and of all other houses in making credits?

A. I am.

Q. Please state upon what wholesale houses universally base a credit.

A. The rule is to take a statement from the people themselves demanding credit, and also to get reports upon their standing from the various commerical agencies—Dun and Bradstreet, for instance; also to sometimes consult local banks or local attorneys as to the standing of the people applying for credit in their own community.

Q. I will ask you whether or not this is the custom of John V. Farwell Co.

A. It is and always has been.

Q. I hand you here a document and ask you what it is.

A. It is a letter received in the regular course of the mail from W. F. Wolfe & Son, of Oklahoma city, defendants in this case.

Q. I will ask you to read the letter and will ask you to send the original letter to Messrs. Wisby & Horner, attorneys for
589 plaintiff, at Guthrie, Oklahoma.

A.—

OKLAHOMA CITY, I. T., *Feb'y* 10, 1890.

Mess. J. V. Farwell & Co., Chicago, Ills.

GENTLEMEN: A young man called at our store a moment ago and said he wanted to know as to our standing, &c., &c., &c. We have a stock here of gen'l merchandise worth $14,000, buildings and improvements on three (3) lots, 75 feet front, 140 feet deep, valued at, the minimum, $7,500. We have valuable property in Topeka—a stock of goods worth, at the lowest estimate, $45,000. We owe, total, $22,000. Our residence property in Topeka, Kans., worth $25,000. We have other property, and consider ourselves worth from 75 to 100,000. We have always paid our debts, and purpose to. We have a pretty large *of* stock in flannels, blankets, overcoats, cloaks, &c., but they sell with us the year round; sold last week about 30 pr. blankets and 50 bed comforts, &c. New people coming in need these things.

We think it strange for a first-class firm to inquire about us through the medium of a one-horse lawyer's office, but we will excuse you and let it pass. You (we presume) may have made this inquiry because we ordered a few things through one of your young men. If the matter is not entirely satisfactory, do not ship the little jag of goods.

Very truly, &c., WM. F. WOLFE & SON.

Q. You may state whether or not you believed the statement made in that letter as to the affairs of W. F. Wolfe & Son.

A. I most assuredly did.

Q. Will you please state whether or not the goods heretofore testified to as being sold to W. F. Wolfe & Son were sold for cash or upon credit?

A. They were sold upon credit.

Q. Will you please state when the account became due?

A. The account became due as follows: Bill of two hundred twenty-nine dollars eighty-eight cents ($229.88) became due
590 December 9, 1890; bill of two hundred fifty-four dollars twenty-seven cents ($254.27) became due November 9, 1890, and bill of thirty-nine dollars and seventy-six cents ($39.76) became due December 13, 1890.

Q. Will you please state why you sold W. F. Wolfe & Son goods upon credit?

A. They requested it, and I relied upon the statements in this letter concerning which I have testified.

Q. You may state whether or not this letter was the inducement upon which you granted the credit.

A. It was.

(Signed) JOHN S. CHUMASERO.

Subscribed and sworn to before me this twenty-eighth day of March, 1894.

MARGARET A. CURTIN,
Notary Public, Cook County, Illinois.

By COUNSEL: After this follows a long list of exhibits, which I do not care to take up the time to read, excepting the statement as to the amount, which is $523.91.

Defendant now reads the deposition of FRED E. FRENCH, taken at the same time and place as the deposition of John T. Chumasero:

Same objection, ruling, and exception.

Q. Please state your name, age, occupation, and residence?

A. Fred E. French; lawful age; assistant credit man for John V. Farwell Company; reside in Evanston, Cook county, Illinois.

Q. What position do you fill with the John V. Farwell Company?

A. Assistant credit man.

Q. How long have you filled that position?

A. About fifteen years.

Q. What are your duties as assistant credit man?

A. Determining who shall and who shall not have credit.

Q. Do you know the firm of W. F. Wolfe & Son, formerly doing business at Oklahoma city, I. T.?

A. Yes; in a business way.

Q. Did the firm of W. F. Wolfe & Son, to your knowledge,
591 ever have any business transactions with John V. Farwell & Company?

A. I know that they did.

Q. What was the nature of those transactions?

A. They purchased several bills of dry goods during the year 1890.

Q. Will you please state what is this paper which I hand you and which is attached to Mr. Chumasero's deposition as Exhibit A?

A. This is a statement of the account of W. F. Wolfe & Son with John V. Farwell & Company.

Q. Will you please state what amount, if you know, the firm of W. F. Wolfe & Son was owing on December 20th, 1891, to John V. Farwell & Co.?

A. On December 20th, 1891, they were owing to John V. Farwell & Company the sum of five hundred twenty-three dollars and ninety-one cents ($523.91).

Q. How was that indebtedness incurred?

A. It was incurred by the purchase of goods, wares, and merchandise sold and shipped to them by John V. Farwell & Co.

Q. Will you please state, Mr. French, what the documents are which I now hand to you and which are attached to the deposition of Mr. Chumasero as Exhibits B, C, D, E, F?

A. These documents are duplicate bills showing the different items purchased and the dates on which they were purchased by the firm of W. F. Wolfe & Son of John V. Farwell & Company.

Q. Were all the goods mentioned in these duplicate bills sold and shipped to the firm of W. F. Wolfe & Son?

A. They were.

Q. Has any part of this indebtedness of five hundred twenty-three dollars and ninety-one cents ($523.91) owing from W. F. Wolfe & Son to John V. Farwell & Company ever been paid, to your knowledge?

A. None of it has ever been paid.

Q. Will you please state what these papers are which I now hand to you, which have been attached to the deposition of Mr. Chumasero as Exhibits G, H, & I?

A. They are the duplicate shipping receipts received by John V. Farwell & Co. from the Atchison, Topeka & Santa Fe Rail-
592 road Company for the goods shipped to W. F. Wolfe & Son.

Q. Will you please state what these three papers are which I hand you for your identification and which are attached to Mr. Chumasero's deposition as Exhibits J, K, and L?

A. They are shipping tickets.

Q. For what are these shipping tickets used?

A. When a bill of goods is purchased by a merchant and is ready for shipment these tickets are made out by the general salesmen and are brought to the credit office to be checked before the goods can be shipped.

Q. How are these shipping tickets checked?

A. By the initial letter of the name of the credit man who checks them, as on these shipping tickets by the letter "F" in the upper left-hand corner.

Q. For whose signature is that letter "F" intended?

A. It is my signature; put there by myself.

Q. What is the purpose of that signature?

A. By it the shipping clerk is instructed to ship the goods called for on the shipping ticket.

Q. You may state, Mr. French, whether or not the packages mentioned on the back of these shipping tickets are the same packages

for which the shipping receipts already referred to were received from the railroad company.

A. They are the same.

Q. What was done with the original bills?

A. They were mailed to W. F. Wolfe & Son.

Q. Will you state, Mr. French, if you know, whether or not statements were ever sent to W. F. Wolfe & Son of their account with John V. Farwell & Co.?

A. Statements were sent to them.

Q. Was any objection ever made to them, to your knowledge?

A. Not to my knowledge.

Q. I here hand you a document and ask you to state, if you know, what it is.

593 A. This is a letter received by John V. Farwell & Co. through the regular course of the mail of W. F. Wolfe & Son, of Oklahoma city, I. T.

Q. Will you please give the contents of that letter?

A. The letter reads as follows:

OKLAHOMA CITY, I. T., *Feb'y* 10, 1890.

Messrs. J. V. Farwell & Co., Chicago, Ill.

GENTLEMEN: A young man called at our store a moment ago and said he wanted to know as to our standing, &c., &c., &c. We have a stock here of gen'l merchandise worth $14,000; buildings and improvements on three (3) lots, 75 feet front, 140 feet deep, valued, at the minimum, $7,500. We have valuable property in Topeka, a stock of goods worth, at the lowest estimate, $45,000. We owe, total, $22,000. Our residence property in Topeka, Kans., worth $25,000. We have other property, and consider ourselves worth from 75 to 100,000. We have always paid our debts and purpose to. We have a pretty large *of* stock in flannels, blankets, overcoats, cloaks, &c., but they sell with us the year round; sold last week about 30 pr. blankets and 50 bed comforts, &c. New people coming in need these things.

We think it strange for a first-class firm to inquire about us through the medium of a one-horse lawyer's office, but we will excuse you and let it pass. You (we presume) may have made this enquire because we ordered a few things through one of our young men. If the matter is not entirely satisfactory, do not ship the little jag of goods.

Very truly, &c., WM. F. WOLFE & SON.

Q. You may state whether or not it was on the strength of statement made in this letter that goods were shipped to W. F. Wolfe & Son.

A. Relying on the truth of said statement and on the strength of same, goods were directed, shipped, and the credit given to W. F. Wolfe & Son.

FRED E. FRENCH.

Subscribed and sworn to before me this twenty-eight day of March, 1894.

MARGARET A. CURTIN,
Notary-Public,-Cook County, Illinois.

594 Defendant here reads the deposition of WILLIAM L. LINDSEY, taken at the same time and place as that last read.

Same objections, ruling, and exceptions as to last deposition.

Q. You may state your name, age, occupation, and residence.

A. William L. Lindsey; forty-five years; head book-keeper and accountant for John V. Farwell Company; reside in Chicago, Cook county, Illinois.

Q. How long have you acted in the capacity of head book-keeper and accountant for John V. Farwell & Company?

A. Ten years.

Q. What are your duties in that position?

A. General supervision of the books of account of the John V. Farwell Company, of all entries made on the ledgers, and of the bills receivable accounts.

Q. Are you acquainted with the firm of W. F. Wolfe & Son, who formerly did business at Oklahoma city?

A. Only in a business way.

Q. Do you know, Mr. Lindsey, whether or not the firm of W. F. Wolfe & Son ever had any business relations with the John V. Farwell Company?

A. The books of account show that in the year 1890, from March 10th to October 13th, inclusive, the firm of W. F. Wolfe & Son, of Oklahoma, purchased several bills of goods of John V. Farwell & Company.

Q. I hand you here a certain document attached to the deposition of Mr. Chumasero as Exhibit "A" and ask you to state what it is.

A. It is a statement of the account of W. F. Wolfe & Son with John V. Farwell Company, showing the amounts of the various bills, the dates on which they were purchased, together with the cash payments credited on the same.

Q. What amount was owing on December 20th, 1891, from W. F. Wolfe & Son to John V. Farwell Company?

A. The firm of W. F. Wolfe & Son were owing on December 20th, 1891, to John V. Farwell & Company the sum of five hundred twenty-three dollars and ninety-one cents ($523.91).

Q. Please state how this indebtedness was incurred.

595 A. It was incurred on account of goods sold and shipped by John V. Farwell Company to W. F. Wolfe & Son.

Q. I now hand you several papers attached to the deposition of Mr. Chumasero as Exhibits B, C, D, E, and F and ask you to state, if you know, what they are.

A. They are duplicate bills of the goods sold and shipped to W. F. Wolfe & Son by John V. Farwell & Company.

Q. Will you please state, Mr. Lindsey, whether or not this in-

debtedness of five hundred twenty-three dollars and ninety-one cents ($523.91) or any part of it has ever been paid.

A. This amount or any part of it has never been paid.

(Signed) WILLIAM L. LINDSEY.

Subscribed and sworn to before me this twenty-eighth day of March, 1894.

MARGARET A. CURTIN,
Notary Public, Cook County, Illinois.

Defendant offers in evidence the letter identified in the depositions just read.

Objected to as not properly identified, waiving the objection as to receipt of same from Farwell Company.

Testimony of Louis H. Wolfe.

LOUIS H. WOLFE, being called as a witness for defendants, testified:

By Mr. HORNOR (witness is now handed a paper which is identified as Exhibit A to the deposition which has been heretofore read of John T. Chumasero): I will ask you to state, if you know, whose handwriting that is.

A. I do not know positively.

Q. Who do you think wrote it?

A. I think my father wrote it.

Defendant reads said letter in words and figures as contained in the deposition just preceding of John T. Chumasero and F. E. French.

Same objections, ruling, and exceptions as made to preceding letters.

Defendant offers in evidence the testimony of James West from the certified copy of the testimony of James West given in
596 the trial of John G. Miller & Co. *vs.* William F. Wolfe and Louis H. Wolfe, partners as William F. Wolfe & Son, and others, number 12452, in the district court of Shawnee county, State of Kansas, taken on the 15th day of June, 1891.

Plaintiffs object to this testimony for the reasons given in objections to the introduction of the former depositions; which objection was by the court overruled. Exception.

Counsel reads:

JAMES WEST, of lawful age, being first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause above entitled, deposes and says:

Q. Please state your name and line of business.

A. James West; credit man for Sweet, Dempster & Co., No. 220 Monroe St., Chicago, Illinois.

Q. Were you acting in that capacity during the year 1890?

A. I was.

Q. From your position as credit man for that firm, did you know in 1890 how much, if anything, the firm of Wm. F. Wolfe & Son, of Guthrie, Oklahoma, was indebted to Sweet, Dempster & Co.?

A. I did.

Q. Do you still know how much that indebtedness was and is?

A. I do.

Q. Taking the date, say, of August 22nd, 1890, what was the amount that the firm of Wm. F. Wolfe & Son was owing to the firm of Sweet, Dempster & Co., of this city?

A. $1,374.26.

Q. Had that indebtedness been running for any period of time?

A. Yes, sir.

Q. For how long?

A. Some parts of it had been running longer than others.

Q. When was the first contracted, or about when?

A. Some time prior to March 15th, 1890.

Q. When was the last item of this $1,374.26 contracted?

A. August 12th, 1890.

597 Q. When they were owing your house the full amount named on and after August 12th, 1890?

A. Yes, sir.

Q. What was the amount of the items contracted on the 12th of August, 1890?

A. $12.00.

Q. How much was the next item preceding?

A. $137.25.

Q. On what date?

A. August 7th, 1890.

Q. What was the next item preceding that?

A. $224.50.

Q. On what date?

A. July 17, 1890.

Q. Then they had been owing your house approximately $1,000 on July 17th, 1890, until the 22nd of August, 1890?

A. Yes, sir; almost.

Q. Has any part of that indebtedness ever been paid?

A. No, sir.

(Signed) JAMES WEST.

Defendant now offers in evidence the deposition of George Dimond, taken at the office of O'Bryan & Gordon, in the city of Wichita, county of Sedgwick, State of Kansas, in this case now on trial.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Defendant now offers in evidence the deposition of E. E. Fritschle, taken in the case of Alexander Frankenthal & Bro. *vs.* W. F. Wolfe & Son in July, 1891, under the stipulation.

Plaintiffs object to this on the same ground as to the other depositions; which objection is by the court overruled; to which plaintiffs excepted.

Counsel reads:

EDWARD FRITSCHLE, of lawful age, being duly sworn according to law that the testimony he should give relating to the
598 cause or matter for which this deposition is to be taken should be the truth, the whole truth, and nothing but the truth, deposes and saith as follows, to wit: My name is Edward Fritschle. My age is 33 years. I reside in the city of St. Louis, Missouri, and I am cashier and book-keeper of the plaintiffs in this suit. I have been so engaged with the plaintiff- for the last ten years. I have also charge of the accounts of said firm and am familiar with the account of plaintiffs against the defendants in this suit. The defendants are indebted to the plaintiffs in the sum of $195.85 for goods purchased of plaintiffs as per itemized account hereto attached, marked Exhibit "A," and made a part of this my deposition. Exhibit "A" is a true and correct copy of the indebtedness of defendants to plaintiffs taken from plaintiffs' books, and which I certify to be correct in every particular.

No part of this sum of $195.85 has been paid, and the said sum, with interest, is still due and unpaid.

I will state further in regard to our business relations and transactions with defendants that in the spring of 1890 we received an order from the defendants, through one of our salesmen, for goods. We acknowledged receipt of this order to the defendants on the 24th of March, 1890, and informed them that we could not ship them the goods asked for owing to lack of information as to their financial standing. In this letter I enclosed them a blank statement printed for them to fill out and sign and send to us. If this statement so filled out by them demonstrated that they were solvent, then we would send them the goods. I file letter-press copy of this letter of March 24th, 1890, of ours, have it marked Exhibit "B," and make it a part of this my deposition.

In a letter dated March 29, 1890, the defendants replied to our said letter, which original letter or reply I file herewith, have it marked Exhibit "C," and make it a part of this deposition. From the nature of this letter of defendants and the statements made in the same, which stated their assets $86,000 and their liabilities at
$20,000, we were influenced to ship defendants the order
599 received from them just mentioned. This order amounted to $443.98, and this was paid.

In August, 1890, we received another order from defendants to the amount of $195.85, and upon referring to defendants' commercial record in our possession, which contained their statement marked "C," hereto attached, we concluded to ship the goods, which we did. I will state that in giving defendants credit and shipping them the goods we did so ship them we relied wholly upon the representations contained in Exhibit "C," hereto attached, and we would not have opened an account with defendants at all if it had not been for the said statements in said Exhibit "C" of the defendants.

(Signed) EDWARD FRITSCHLE.

Sworn to and subscribed before me, at city St. Louis, State of Missouri, on the 22d day of July, 1891, at the place and between the hours as specified in the notice and caption hereto attached.

ENRIQUE PARMER,
Notary Public, City of St. Louis, State of Missouri.

Exhibits B and C are here offered in evidence. Objected to as to Exhibit B as not the best evidence; which objection was by the court overruled; to which plaintiffs excepted.

EXHIBIT B.

MAR. 24, '90.

Mess. W. F. Wolfe & Sons, Topeka, Kans.

GENTLEMEN: We have received an order from your Oklahoma branch amounting to about $450.00. It is the first bill we have had the pleasure to sell you, but we regret to say our commercial information is not sufficient to warrant shipment of goods without further information. As we desire to do justice in the premises, we hand you enclosed blank statement to fill out, sign, and return; also kindly give your references. If matters are satisfactory, we shall be pleased to forward goods. Advise by early mail, and oblige,

Yours truly, A. FRANKENTHAL & BRO.

600 EXHIBIT C.

OKLAHOMA CITY, *M'ch* 29, 1890.

Mess. A. Frankenthal & Bro., St. Louis, Mo.

GENTLEMEN: Your esteemed favor at hand, and contents carefully noted. We are really surprised, and yet we admit times are critical, and all business houses should carefully scrutinize credits. We have at the home store in Topeka about $45,000 worth of first-class clean stock; real estate worth more than $17,000. Our stock here is worth every penny of $14,000 and our realty dog cheap at $10,000. We occupy Nos. 222 & 223 and rent out 224 for a drug store. We have three numbers 25 x 140; total, 75 x 140; good, safe building on it, best store and best stock in town and doing the best business; have only 1 clerk here; doing all the business here ourselves, and only 2 clerks in Topeka. We are running economically, and always have practiced strict economy. I am the old man of the house; am here really for health; my health was poor, & our family doctor advised me to go to a warmer climate, and his advice has been good; my health is better every way. The only thing the commercial agencies can say is, "They are a little slow." Yes; and who in these times has not been slow? We have been doing business in Topeka 12 years and always paid our debts. We purchased a little too heavy in woolens & heavy goods, but we are working out nicely. We refer to Mess. Rice, Stix & Co.; we owe them a small amount; also to Mess. Rosenheim, Levis & Co.; we owe them

a small amount. If you feel uneasy in your minds, do not ship the stuff; we will buy somewhere else.

Very truly, &c., WILLIAM F. WOLFE & SONS.

Written on back of letter: I understand from my son in Topeka that our indebtedness is about $20,000. You may let Mess. Rice, Stix & Co. read this letter, and also Mess. Rosenheim, Levis & Co.; also call on Mr. Williams, now with Brown, Daughaday &
601 Co. This gentleman has known me (the senior) for some time, and he can give you some information. We have nothing to hide, nothing to conceal; we have paid every cent we owed during a business period of over 50 years.

W. F. W. & SONS.

COUNSEL FOR DEFENDANT: We now desire to offer in evidence a certified copy of a warranty deed, which I have asked the stenographer to mark Exhibit 14, bearing date the 7th day of January, 1892.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Testimony of A. H. Vance.

A. H. VANCE, being called as a witness for defendant, testified:

Examination by Mr. HORNOR:

Q. Were you ever judge of the district court at Topeka?
A. I was not.

Cross-examination by Mr. ELLIS:

Q. You may state what, if any, official positions, if any, you have held in Shawnee county.
A. I was county attorney of Shawnee county for ten years and member of the legislature.
Q. Ten years member of the legislature?
A. Yes, sir.

Testimony of Louis H. Wolfe.

LOUIS H. WOLFE, being recalled as a witness for defendant, testified as follows:

Direct examination by Mr. HORNOR:

Q. I will ask you to state, if you know, who is now the owner of the real estate in Oklahoma city which you at one time owned.

Objected to as no proper way to prove title and long subsequent; which objection was by the court sustained, defendant excepting.

Q. I will ask you to state, if you know, whether or not this Oklahoma City real estate was at any time deeded to J. T. Clark in payment of the liability which J. T. Clark had incurred by signing the note for yourself and your father.

Objected to and excepted to as misconduct, and also be-
602 cause it is indefinite and uncertain and calls for a conclusion of the witness and is an attempt to get at indirectly something that cannot be got directly into the record; which objection was by the court sustained. Exception.

Here counsel asks permission of the court to propound another question to this witness in order to make the record clear relative to the payment by William F. Wolfe and wife of any liability which J. T. Clark, one of the parties to this chattel mortgage, may have assumed for William F. Wolfe & Son, said payment being made by a conveyance of real estate in Oklahoma city to said J. T. Clark.

By the COURT: It appearing to the court that counsel refers to matters and things contained in the deed heretofore offered and rejected, the court refuses the request of counsel.

By Mr. ELLIS: I desire to make a formal exception to the statement of counsel just made as misconduct. Exception allowed.

Defendant here offers the evidence of Drury L. Melone, contained in the record of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son, at page 280:

Q. State your residence and business.

A. I am a merchant here in Guthrie.

Q. How long have you resided in Guthrie?

A. About two years.

Q. How long have you been in the mercantile business?

A. I guess about 15 years; ever since I was a boy.

Q. Were you acquainted with the values of the different lines of goods in the fall and winter of 1890?

A. In clothing and hats and dry goods I think I have a fair knowledge.

Q. Were you acquainted with the firm of W. F. Wolfe & Son, formerly in business here in Guthrie?

A. I knew the young man; I was not acquainted with the senior member.

Q. Did you know their location?

A. Yes, sir; they were located in this building.

Q. Do you remember the circumstance of the house being
603 closed by legal process?

A. Yes, sir.

Q. Do you know the condition of the stock at that time?

A. Yes, sir; I think I do. I have been in there; would go in sometimes and take a glance around at the goods.

Q. About the time it was seized by the sheriff, in Dec., 1890, you may state to the court and jury the value of that stock of goods or about the value you placed on it.

A. It is a difficult thing for a man to form an exact estimate of a stock by looking at it. Of course, I have an idea, but it might be far from right.

Plaintiffs object to any further reading from this testimony, as no foundation is laid and it is incompetent, irrelevant and immaterial,

and not within the issues in this case and can in no way bind the plaintiffs.

By the COURT:

Q. When was the date?

By COUNSEL: About the time it was seized by the sheriff, in December, 1890.

By the COURT: The objection will be sustained.

To which defendant excepted.

Testimony of Louis H. Wolfe.

LOUIS H. WOLFE, being recalled as a witness by defendant, testified as follows:

Direct examination by Mr. HORNOR:

Q. Mr. Wolfe, I will ask you to state if you know how did the stock of goods in the Guthrie and Oklahoma City stocks on December 15, 1890, compare in size and amount, without asking you to state the amount, with what they had been before that time and during the year 1890; were they larger or smaller?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. I don't know. I presume that the Guthrie stock was larger than it was at sometimes during 1890 and smaller than other times; any stock runs different through the year or through six
604 months; I couldn't say exactly as to what proportion it bore to the average value.

Q. Now, to refresh your recollection, I will ask you if you did not testify upon the trial of the case of Jaffray & Co. *vs.* Wolfe & Son that to the best of your knowledge it was about the same.

A. I don't remember of testifying that at all now; I may and I may not have done it.

Q. Well, your recollection was better at the time this case was tried, was it not, than it is now?

A. I would judge it would be; yes, sir.

Q. Have you any date or information by which, after having heard the question propounded to you with reference to that — your former testimony, your memory is refreshed in any way?

A. I have not.

Q. Can you, after having heard the question propounded, answer any more definitely with reference to the comparative size of the stocks at the different times?

A. No, sir; I could not.

By Mr. HORNOR: Under the circumstances, I will ask permission to read from the evidence of Louis H. Wolfe taken in the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. I will ask you to state, Mr. Wolfe, if the stocks were not about the same size in December, 1890, that they were in the summer of 1890.

A. What time in the summer of 1890?

Q. Well, along in July or August or June.

A. Well, in August I presume we had fall goods coming in. In July the stock was probably less, and in June probably less; I couldn't say as to the proportion between *the* December and July or August or June.

Q. You would not think, though, that they was the same?

A. Well, I don't remember; I wouldn't say unless I had some recollection on the subject.

605 *Testimony of Louis H. Wolfe.*

LOUIS H. WOLFE, being recalled as a witness for the defendant, testified as follows:

Direct examination by Mr. WISBY:

Q. How long did you say you had been in the mercantile business, Mr. Wolfe?

A. Since 1879 until 1890. That would make about eleven years.

Q. Did you generally carry such a general line of business such as you did in Oklahoma when you were in business?

A. Yes, sir; what is usually called a general dry-goods store.

Q. How long had you been in charge of the stock here in Guthrie prior to the time you closed business, in December, 1890?

A. I think from about the first day of June. I wouldn't be positive about the exact date; the first day of June until we gave the chattel mortgage.

Q. You were in charge of this stock from that time until you gave the chattel mortgage?

A. Yes, sir.

Q. And you had had nearly eleven years' experience at that time in the same line of business?

A. About ten years and a half up to the time that I took charge of it; yes, sir.

Q. About what amount in value did you have in the stock in June and July, 1890, in the Guthrie stock, just about, approximately?

A. Oh, I couldn't say. I have nothing to base any opinion on at all. I can give you what I thought at that time, if that is what you want me to testify to. I could not say as to the exact amount.

Q. You have some opinion as to the probable value of the stock at that time, have you not?

A. Well, I think I thought at that time that that stock was worth about thirty-five to forty thousand dollars.

606 Q. In June and July?

A. Yes, sir.

Q. Well, was it not lower in July than it was in September and October?

A. I could not say as to that.

Q. Well, sir, didn't you close out the spring stock and the summer stock about along in August, and at that time begin to fill up or prepare to fill up for the fall trade by increasing your stock again?

A. Well, of late years—that is, within the last ten years, say—the wholesale houses and manufacturers have been selling goods in advance of the season. They would sell spring goods, say, in November and December, and they would sell fall goods, say, in May and June and, of course, ship them just as quickly as possible; so it is pretty hard to form an estimate just what stock was in the store at a certain season of the year.

Q. Now, I will ask you if that is not true of the manufacturers selling to the wholesale houses, and that it is not true as to the retail houses.

A. I don't know anything about the wholesale houses at all.

Q. Do you mean to say that it is the custom in this country to buy your fall stock and ship it in in May or April?

A. Fall stock—no; I didn't say in April and May. I said in May and June.

Q. Is it customary to ship in your fall stock in May and June?

A. Yes, sir; it seems to me I meet men on the road along that time of year that are selling goods.

Q. They are not delivering it, though, until late in the season?

A. They are trying to deliver it as quick as possible in order to save expense of insurance and all that.

Q. Was it the custom to buy the fall stock and have it shipped in immediately in May and along that part of the year?

A. It seems to be the custom; yes, sir.

Q. So that was your custom at that time—to buy your late goods in the spring and summer and have them shipped to you by the manufacturer?

607 A. It was the custom of the trade. I cannot say that it was our custom.

Q. These orders that you bought from Jaffray & Co. was for the fall and winter trade, was it not?

A. That was my understanding; yes, sir.

Q. They were bought along in October, November, and the first of December?

A. No; I don't recollect that they were. You must remember that some stuff is always what they call back-ordered. There is never a bill of goods, and especially in dry goods, but some stuff is not out at the time the bill is sent, perhaps on account of delay in shipping to the wholesale houses. They will have to send that later and it will string along clear through the season.

Q. You were receiving goods along in October and November, were you not, for the fall and winter?

A. I presume we were; yes, sir.

Q. Now, about what amount of goods did you have in stock here in December about the time that you closed business?

A. I can give you approximately the amount of the invoice, if that is what you wish.

Q. No, sir. I am asking about what amount of stock you had.

A. I couldn't tell except from my recollection of that from the invoice.

Q. How did that stock compare in December, about the middle of September, with the stock that you had on hand in July and the latter part of June of the same year, in value, I mean?

A. I couldn't answer that. I don't remember what it was or how it compared.

Q. What is your best opinion as to the value of the stock at that time?

A. Well, you mean if I have an opinion. I have no opinion on the matter. I have not thought of it since. I was asked that question before supper and I cannot brighten my memory on that at all.

608 Q. You gave a deposition in this case at Oklahoma city, did you not?

A. I don't recollect whether I did or not.

Q. Don't you remember you testified at the time your mother did there—gave her deposition?

A. No, sir; I do not. I might have testified. I might have testified as to the values, but I don't remember it.

Q. Do you remember of testifying here in the trial of the case of Jaffray & Co. *vs.* Wolfe & Son?

A. Yes, sir.

Q. Do you remember testifying as to the values at that time?

A. No, sir; I do not.

Q. Now, give your best opinion how would that stock, in amount and value, quantity and value, compare with the stock in June and July of the same year.

A. Mr. Wisby, I have no recollection.

Q. Give us your best impression now. You have been in that business, you say, for eleven years and you have been in charge of this stock from June up until the time of the failure?

A. Well, the fact of the matter is I do not recollect how many fall goods were in the stock then, in June and July, and I cannot pass an opinion unless I knew just how many fall goods was there and how the summer sales had been running, and then I have not thought about that for four or five years.

Q. About how much would they vary? Give your best judgment. What would be the probable difference in the value; the variation in the value and quantity of the stock in December as compared with the months which you have named, June and July, the latter half of June and July?

A. The staple stuff would not vary as much as new goods. A good many fancy goods would be different.

Q. Would it probably vary two or three thousand dollars?

A. Yes, sir; I would think it would.

609 Q. Is that your best impression?

A. Yes, sir. Whether it would be larger or smaller I

couldn't say. It might vary from two to four thousand dollars one way or the other; it might not vary five hundred dollars.

Q. That is your best impression, it would vary probably from two to four thousand dollars?

A. Yes, sir.

Now, defendant offers to resume the reading of the testimony of Drury L. Melone, taken in the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Sons. Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiff excepted.

Counsel reads as follows:

DRURY L. MELONE called to the stand.

Q. State your residence and business.

A. I am a merchant here in Guthrie.

Q. How long have you resided in Guthrie?

A. About two years.

Q. How long have you been in the mercantile business?

A. I guess about 15 years; ever since I was a boy.

Q. Were you acquainted with the values of the different lines of goods in the fall and winter of 1890?

A. In clothing and hats and dry goods I think I have a fair knowledge.

Q. Were you acquainted with the firm of W. F. Wolfe & Son, formerly in business here in Guthrie?

A. I knew the young man; I was not acquainted with the senior member.

Q. Did you know their location?

A. Yes, sir; they were located in this building.

Q. Do you remember the circumstances of the house being closed by legal process?

A. Yes, sir.

610 Q. Do you know the condition of the stock at that time?

A. Yes, sir; I think I do. I have been in there; would go in some times and take a glance around at the goods.

Q. About the time it was seized by the sheriff, in Dec., 1890, you may state to the court and jury the value of that stock of goods, or about the value you placed on it.

A. It is a difficult thing for a man to form an exact estimate of a stock by looking at it. Of course I have an idea, but it might be far from right.

Q. Give your best judgment or opinion about the time Wolfe & Son closed out. I fix the time about the 15th or 20th of December, when the officer had taken possession of the goods.

A. It is pretty hard to tell; I don't know the cost. There was between $9,000 and $10,000 worth of goods.

Q. Had you frequently seen and looked over that stock of goods afterwards?

A. Yes, sir; I did.

Q. Did the subsequent investigation cause you to change your mind as to the value at the time you first examined it?

A. No; not at all; it was just about the same. I went there and looked at the stock with a view possibly of getting it myself. I examined it very thoroughly.

Q. You didn't reverse the value by any subsequent investigation and examination?

A. No, sir.

Q. The value you placed on them was a fair market value at that time?

Objected to as leading. Sustained.

Q. Upon what did you base your judgment of the value of these goods?

A. Well, upon what I thought the actual value of the goods might be; not upon what they might *of* cost Wolfe, but what I thought the goods might be worth. Of course that probably has nothing to do with the cost of these goods.

Cross-examination:

Q. Did this estimate that you made have any connection
611 with or reference to the cost price at all?

A. No, sir.

Q. Did you make up your mind they were worth a certain per cent. of their probable cost price?

A. Well, for a fact, I probably did.

Q. Did you not make up your mind these goods cost probably $15,000 and they were worth 60% of their cost?

A. No, sir; not exactly. I didn't know what Wolfe paid for the goods. I just formed an estimate as to what the goods were worth.

Q. Would you not in making this estimate have reference to what you could place these goods there new for?

A. My estimate to go into a stock of that kind, probably, I might say—well, I should think there was $11,000 worth of goods in here.

Q. That would not be the value of the new goods?

A. That would be my estimate.

Q. That would not be the value of the goods at retail?

A. No, sir.

Q. At wholesale?

A. Yes, sir.

Q. Then your estimate would be less than the wholesale cost?

A. No, sir; I was figuring on what I could take the goods in for. I thought the goods probably cost him between $9,000 and $10,000.

Q. You had reference to the actual wholesale value?

A. Only that.

Q. And you thought that is what the goods would cost him, about $9,000 or $10,000?

A. Yes, sir.

Defendant now offers to read the testimony of D. S. McKay, taken

on the trial of the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son.

Objected to, unless it is shown that the witness is absent, as plaintiff- understands he is in the town, and for the same reasons
612 contained in the objection to the testimony of D. L. Melone; which objection was by the court overruled; to which plaintiff- excepted.

Counsel for defendant reads said testimony as follows, to wit:

D. S. McKAY called to the stand.

Q. You may state your name, residence, and occupation.

A. D. S. McKay; Guthrie, Oklahoma Territory; my business at present is speculator, real estate, insurance and bond broker.

Q. What is your age?

A. I am 48 years old.

Q. Have you ever been engaged, and, if so, for how long, in mercantile pursuits?

A. Yes, sir; I have for twenty years.

Q. Did you know the firm of Wolfe & Son when they were in business here?

A. Yes, sir.

Q. Do you know where their business was located?

A. Yes, sir.

Q. Were you acquainted with the general stock they were carrying at the time they closed out here?

A. Yes, sir; I think I was.

Q. Did you see that stock about the time it was taken on attachment or writs of replevin in December, 1890?

A. I saw it after the business was closed.

Q. Immediately afterwards?

A. Now, I don't know how long. It might have been a day or two after.

Q. You may state the value of that stock at that time to the best of your knowledge.

A. At the time I invoiced the stock in company with Mr. Driscoll, I think it was about ten or fifteen days after they closed.

Q. You saw the stock at the time the store was closed. State the value of the stock at the time the store was closed.

A. I believed it to be worth at that time about $10,000.

Q. Had you ever occasion to change that opinion by subsequent investigation and examination of the stock?

613 A. I might say that I think I said, "This stock is worth from $10,000 to $12,000." I think that is the way I worded it.

Q. Well, did the subsequent investigation and examination of that stock support the opinion that you already had upon the value of the stock?

A. Yes, sir; it did.

Q. You had no occasion, on a subsequent investigation and examination, to change that opinion?

A. No, sir.

Q. In the handling of the stock of goods, the different lines and the different articles, in what condition were they with reference to the cost-marks being on them?

A. The stock appeared as if it had been investigated prior to the time we invoiced them, and but very few of the original tags were on them.

Q. How were they with reference to the mill brands?

A. Of course, in cotton goods and domestics the mill brands are printed on the outside of the bolt, but in the instance of dress goods, bolts of cashmeres, and bolts of flannels, there were no marks at all. We experienced a great deal of difficulty in finding what the goods were worth, what mills they were from, and what mills they were manufactured in. Of course, the dress goods you say are manufactured by such and such mills and so and so; for instance, it is the Eagle mills or the Organzo mills. We found in many instances the brands had been entirely torn off from them. Some was the Arnold brand. They are all governed by the brand.

Defendant now offers the testimony of W. J. Milligan, contained in the record of the case of E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son in this court, found on page 258 to 263.

Said testimony is as follows, to wit:

W. J. MILLIGAN called on behalf of plaintiff.

Q. State your name.

A. W. J. Milligan.

614 Q. What is your business?

A. I am adjuster for Burnham, Hanna, Munger & Co.

Q. What do you mean?

A. That means it is my business to attend to the collection of their debts, secure their claims, attend their lawsuits, etc.

Q. How long have you been engaged in that business?

A. Since 1886 for Burnham, Hanna, Munger & Co. The firm used to be Tootle, Hanna & Co.

Q. What experience have you had in estimating the value of general stocks of merchandise throughout the western country and in the purchase and sale of general stocks?

A. During the time I have been in their employ it has always been my business to protect them in sales.

Q. How many different stocks of goods and what value have you handled in that particular for the last several years, and in what places?

A. It would be impossible to state the amount of stocks; I have handled stocks in all the States around Kansas City, and also Texas, Arkansas, and Colorado.

Q. Have you ever examined or bought and sold as many — fifty or one hundred stocks?

A. I should say fifty; I would not like to say one hundred.

Q. And you have examined many more?

A. Yes, sir.

Q. You heard W. L. Harvey's testimony?

A. Yes, sir.

Q. Are you the W. J. Milligan that entered the Guthrie stock of goods formerly owned by Wolfe & Son, and the Oklahoma city stock referred to by him on December 19, 1890?

A. Yes, sir; I went into the Guthrie stock on the 19th of December, and the Oklahoma City stock on the morning of the 24th of December.

Q. At the date that you entered this stock of goods, from your experience in estimating the value of stocks of merchandise and from that examination of this stock at that time, were you
615 able to put an estimate upon the market or cash value of the goods?

A. Yes, sir.

Q. Did you examine those stocks at that time with a view to estimating their value?

A. Yes, sir.

Q. What was their value, each one separately?

A. I estimated the stock at Guthrie at the value of $8,000, and the one at Oklahoma city I should put a value on that stock from $4,500 to $5,000.

Cross-examination:

Q. Did that value have any reference or relation to the cost or material?

A. Yes, sir; I estimated the stock of Guthrie would invoice at first cost—what I mean by that is they were worth at wholesale $12,000. That was intended to be a conservative estimate from the standard of wholesalers. I estimated it as to what could be got out of it. The first cost ought to run about $12,000.

Q. Exclusive of freight?

A. Certainly.

Q. Of course, you don't know what the invoice showed?

A. There was no invoice taken at that time.

Q. If the actual invoice of the Guthrie stock was $17,000, it would raise your estimate if you had known that, would it not?

A. I would judge them worth from sixty-three to sixty-six and two-thirds cents on the dollar.

Q. And that same proportion would hold good in Oklahoma city?

A. Yes, sir.

Q. You estimated the cash value to be about four or five thousand dollars?

A. From $4,500 to $5,000.

Q. And that was two-thirds of the cost value, as you judged it?

A. Yes, sir.

616 Redirect examination:

Q. What proportion of the Guthrie stock of goods would you call old goods? In making your estimate of the Guthrie stock of goods

did you make that estimate as if they had been a recently purchased or new stock of goods, with all the lines perfect, and all the sizes in boots and shoes and everything that runs in sizes perfect, or did you estimate it as a stock of goods that had broken sizes——

Objected to and objection sustained.

Q. What amount of the stock of goods, old or new, did you base your judgment —?

A. I based my judgment on that stock—a portion of it was old and a portion of it was new.

Q. The same at Oklahoma city?

A. Yes, sir; the same at Oklahoma city.

Recross-examination:

Q. Did you see the Oklahoma City stock of goods and examine it at the time of the sale of these goods in February?

A. Yes, sir.

Q. Who purchased that stock of goods?

Objected to as immaterial. Objection sustained.

Q. Was the Oklahoma City stock of goods in the same condition on the day that it was sold as it was when you made the estimate of the value in December?

A. With the exception of about $165 worth of goods, it was. These goods had been stolen out of the stock of goods while in the possession of the sheriff, and the checks show it.

Q. Do you know of the fact of the deputy marshal, Ransom Payne, taking a part of the goods out of the Guthrie stock and a part of the Oklahoma City stock in December and January?

A. Yes, sir.

Q. Do you know the value of the goods that were taken out of the Guthrie stock at that time?

617 Objected to as irrelevant. Objection sustained. Exception taken.

A. When I stated that the stock at the time of the sale was the same as February 4, I neglected to say except the amount of goods taken out by Burnham, Hanna, Munger & Co.

Q. At the time you examined the Guthrie stock of goods in Dec., was any goods taken out of that stock by your direction by Ransom Payne?

A. Yes, sir.

Q. What value were they?

A. The market value of these goods was about $1,050.00.

Q. When you left that stock of goods, having taken these goods out, what was the condition of the goods as compared with their condition when you first went into the stock to examine it?

A. Well, they would be worth that amount less.

Q. Then, I understand you that the goods were the same as when

you went into them with the exception of the taking out of the $1,050.00 worth?

A. Yes, sir.

618 *Testimony of James M. Brooks.*

J. M. BROOKS, being recalled as a witness for defendant, testified as follows:

Direct examination by Mr. WISBY:

Q. You are the same Mr. Brooks who testified heretofore in this case?

A. I guess so; yes, sir.

Q. You stated in your examination a few days ago that you was acquainted with a stock of goods owned by W. F. Wolfe & Son in the summer and fall or early part of the winter of 1890 in the city of Guthrie.

A. I believe so; yes, sir.

Q. You may state if you know about the value of that stock of goods at the time they closed business in 1890, about the middle of December.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which plaintiff excepted.

A. I was acquainted with the stock as any other merchant would be acquainted with a stock of goods that was in his line. Of course, I don't know as to the value of the stock at the time or before they were sold as well as I do afterwards. After I got into the stock, why I then formed an idea as to the amount of the stock there was there.

Q. Can you give any estimate of the probable value of that stock of goods, the probable market value of that stock of goods, at the time they closed business up to that time?

A. Well, my judgment was that there was not less than twelve thousand dollars' worth of goods there.

Q. Did you examine the stock of goods particularly immediately after they did close?

A. In a few days I went in to assist in the inventory for Mr. Shockey.

Q. Did your subsequent examination and investigation of the stock of goods after they closed their business cause you to change your mind as to the probable value of the stock that you had theretofore formed?

A. I don't think so; I don't think it did; not that I remember of.

Q. Now, what do you mean by twelve thousand dollars,
619 about that value of twelve thousand dollars, what did you base that on?

A. That is the market value of the goods or the cost.

Q. The cost of all of the goods?

A. Yes, sir.

Q. What would be the cash value, in your judgment, under the circumstances?

A. About fifty cents on the dollar of that amount; about six thousand dollars; I bid sixty-two hundred dollars for that stock at the first sale. If you remember, it was sold twice in one day. The first sale didn't hold, and it was knocked down to another party, and in the afternoon it was sold for $5,275, when I bought it, but in the forenoon I bid six thousand, I believe, and two hundred dollars, if I remember right.

Q. The first party who bought it didn't pay the money and take the goods?

A. They were unable to close the deal up or raise the money, or had some difficulty about it, I don't know, but they never took it, at least, and the sheriff sold it again in the afternoon at two o'clock.

Q. You say after it closed you assisted in invoicing the goods?

A. Yes, sir.

Q. You say you estimated the value of the goods at about twelve thousand dollars, and that was what you estimated to be the wholesale cost of them before you examined them?

A. Well, I thought that this stock was worth about twelve thousand dollars, and was willing to give about fifty cents; that was the way I usually buy those stocks—buy them without an inventory, buy them on my judgment.

Q. After you had made the inventory was it your opinion that the probable value of the stock was about the same?

A. I was satisfied the stock was invoiced too low.

Q. What invoice, the one that was made the last time?

A. Well, the first time; they were both too low, in my estimation.

620 Q. Do you know about the invoice—about the amount?

A. No, sir; but it strikes me that it was about eight thousand dollars—somewheres about seven or eight thousand dollars. I am not positive about that

Q. Was that the first invoice made by the sheriff?

A. I think so; yes, sir; made by Shockey.

Q. Then another invoice was made, was there?

Objected to as not the best evidence as to the invoice and incompetent; which objection was by the court sustained; to which defendant excepted.

By the COURT: He may testify from his own knowledge what the invoice was.

A. I assisted in both invoices.

Q. I will ask you if there was any material difference in the two invoices, if you remember.

A. I don't remember about that.

Q. You say that the twelve thousand dollars that you put upon them was the wholesale cost, what you estimated to be the wholesale cost or the cost at wholesale price?

A. That was my judgment, I believe, at the time.

Cross-examination by Mr. ELLIS:

Q. Mr. Brooks, did you sell these goods out subsequently?
A. Yes, sir.
Q. What did you get for them when you sold them?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

A. That is hard to tell; I think we got a fair price. We had another stock of goods here, and they were thrown together, the two stocks were at that time, and they were all sold together. We never invoiced the stock after we bought it; we went to work selling goods.
Q. Did you make an estimate of the amount of your profit on that stock of goods?

621 Objected to as incompetent, irrelevant and immaterial, and not proper cross-examination; which objection was by the court overruled; to which defendant excepted.

A. When do you mean; after they were sold?
Q. Yes, sir.
A. Yes, sir.
Q. What did you figure your profit at?

Objected to as last above; which objection was by the court overruled. Exception.

A. Well, the only way we had of arriving at that was our annual inventory about a year afterwards.
Q. Give us the result.
A. About a year afterwards, as I say, we had two stocks of goods and threw them in there and sold them all together, and we made that year about eleven thousand dollars—our net profits were about $11,000—and we figured that we had made somewheres from seven to eight thousand dollars of that out of this stock of goods. Of course, that is only an estimate, for, as I say, all we could figure was our yearly profits that our inventory showed.
Q. You put them on the market and rushed them off here, didn't you; advertised them as a bankrupt stock and sold them that way?

Objected to as irrelevant and immaterial; which objection was by the court overruled; to which defendant excepted.

A. We advertised a good deal and howled pretty loud all the time.
Q. Now, Mr. Brooks, what, if anything, do you know as to whether the same amount of goods were in that stock at the time you finally bought them as there were when Shockey first took them?
A. We missed some stuff.
Q. Is it not a fact that it was perfectly apparent that several thousand dollars' worth of goods had been taken out of that stock?

A. No, sir; I think not; not several thousand dollars'
622 worth—that is, unless you include the goods that were taken out by this Kansas City store.

Q. Unless you include that concern; but it was perfectly apparent that there had been goods taken out besides that after Burnham, Hanna, Munger & Co. got their goods?

A. Yes, sir; there were some goods taken out.

Q. And you don't know the amount that was taken out while the sheriff had them?

A. No, sir.

Q. When you bought the goods you bought what was left after these other goods had been taken out and after the Kansas City firm had taken their goods out besides, didn't you?

A. Yes, sir.

Q. I will ask you if it is not a fact that you looked over the stock after Burnham, Hanna, Munger & Co. got their stock out, and then before you bought them looked over them again and finally noticed that there had been goods taken out of there.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

A. The goods which were short were easily detected from the invoice of the goods; they were easily detected from the second inventory, when we invoiced the stock the second time.

Q. Do you remember, Mr. Brooks, about how much there was of those goods that was gone that you detected the loss of?

A. Well, I don't think there was a very great amount. I remember, if I remember right, right at the time I thought that the amount was small, perhaps a few hundred dollars. It was mostly in gloves and underwear and furnishing goods, and such things as men wear. There was a good many depredations happened in there at that time, and my recollection is that the amount of the variance of the stocks was not very large; that is my understanding.

623 Q. You don't remember of there being over a few hundred dollars?

A. No, sir; I don't think so.

Redirect examination by Mr. WISBY:

Q. Your recollection—the time that elapsed from the taking of the first invoice until the second that you think these goods were missing?

A. Yes, sir.

Q. Now, you say you assisted in making both invoices?

A. Yes, sir.

Q. And you were sworn to appraise the stock, too, were you not?

A. Yes, sir.

Q. Didn't you make about the same appraisement in one as you did in the other?

A. I think about the same values; yes, sir.

Q. Well, the quantity that you supposed had been taken out was so small that it didn't make any material or perceptible difference in the invoice, did it, excepting to the amount of probably one hundred and forty or fifty dollars, or something that way?

A. Well, I don't think it amounted to a great deal, as I said before; maybe two or three hundred dollars; not that much; I hardly think that much. That is not very clear in my mind now as to the amount, but I did not figure that there was a great deal gone. I know I did spend some time in the store in checking up the stuff that was short. My recollection now is that there was a few blankets short; a few pair.

Q. Now, this estimate of twelve thousand dollars that you put upon the stock was put upon it before the—the first estimate you made was put upon it before any of the goods were taken out, if I understand it correctly?

A. No; that was long after the Kansas City goods were taken out—after Burnham, Hanna, Munger's goods were taken; they replevined some stuff; that is my recollection.

Q. Were you not in there invoicing at the same time?

624 A. Yes, sir. I didn't attempt to place any value on the stock until—that is, to be very particular about it, until I had made up my mind to bid the stock in, and then I went through it very carefully.

Q. Well, you went through it carefully, too, when you were invoicing it, did you not?

A. Well, I did, but I didn't do the figuring in that inventory; I done the appraising; I had nothing to do with making the invoice; I appraised the stuff and didn't do any of the work.

Recross-examination by Mr. ELLIS:

Q. Mr. Brooks, are you able to tell about how many days it was after Sheriff Shockey took possession of this stock of goods down here, this Guthrie stock, before you began to estimate its value there?

A. No, sir; I am not.

Q. Well, was it not ten or fifteen days or more before you went in there to estimate the value?

A. Well, it does not strike me that it was as long as that; it might have been, though; I couldn't say as to that.

Q. It was several days afterwards, was it not?

A. Yes, sir; it was several days.

Q. And you don't know whether there was any goods taken out while in the charge of the sheriff between the time the sheriff got possession and the time you first made your invoice aside from the Burnham, Hanna, Munger goods or not, do you?

A. No, sir.

Q. You wouldn't have any way to check up any deficiency of that kind?

A. No, sir.

Redirect by Mr. WISBY:

Q. Was not Mr. Harvey in there when you first went in to assist the sheriff?

A. Yes, sir.

Q. And claiming the right of possession to the property?
625 A. Why, I believe so; I don't know. I couldn't say that.
Q. And the sheriff took possession from him, did he not?
A. I said that Mr. Harvey was in charge—Mr. Harvey was in charge for the mortgagees.
Q. You went in for the sheriff at that time when he was in charge?
A. Oh, I went in with Mr. Cunningham the first time I was in that store; I forget whether the sheriff was there or not.
Q. Mr. Harvey was in there at that time, was he not?
A. He was in when we got in; yes, sir.
Q. Was he not there when you went in with the sheriff to take the invoice?
A. Well, I don't remember. There was a good deal that happened there then at that time. We had to break in; I don't remember.
Q. Well, was it shortly after you and Mr. Cunningham went in there and saw Mr. Harvey in there that you went in with the sheriff?
A. I believe so; yes, sir. I think it was that day or the day after. I don't know but the same day.

By Mr. ELLIS:

Q. Now, is not this the way of that: The first time you went in there you went in on account of the breaking of the door; you went in first with Harper Cunningham?
A. Yes, sir.
Q. At that time you found Mr. Harvey in charge, didn't you?
A. Yes, sir; I found him in charge.
Q. And the next time you went in there you found the sheriff in charge, didn't you?
A. I went in with the sheriff.
Q. And he was in charge at that time, was he not?
A. Well, I suppose so. I went in for the sheriff; whether I went in with him or not I don't know.
Q. You went in and made the appraisement, didn't you?
A. Yes, sir; but I forget whether I went in with him, but I went in for him.
626 Q. You were several days making the first appraisement, were you not?
A. Yes, sir; several days.
Q. Is it not your recollection that after the sheriff took possession, before you completed your inventory, that it was a week or ten days after he had taken possession before you completed it?
A. I think we were about a week making the inventory.
Q. You did not stay in there nights and watch the goods, did you?
A. No, sir.

Testimony of Will Harvey.

W. L. HARVEY, being recalled as a witness for the defendant, testified as follows:

Direct examination by Mr. WISBY:

Q. You are the same Will Harvey who has testified heretofore in this trial?

A. Yes, sir.

Q. Were you in the store building here where the Wolfe stock was at the time the sheriff came in to take possession under the writ of attachment?

A. Yes, sir.

Q. Did he take possession from you?

A. He did.

Q. Under the writ of attachment?

A. I think—yes, sir; it was the writ of attachment.

Q. Was you in possession of the stock of goods at Oklahoma city that he took under the writ of attachment?

A. I was.

Q. Do you know Mr. De Ford?

A. Yes, sir.

Q. You say Mr. Vance placed you in charge?

A. Yes, sir; Mr. Vance and Mr. James.

627 Objected to by plaintiffs as entirely immaterial who was in possession; which objection was by the court overruled; to which plaintiff- excepted.

Q. Did you notify Mr. Vance or Mr. James, either or both of them, that the sheriff had taken possession of this stock of goods from you by a writ of attachment?

Objected to as incompetent, irrelevant and immaterial, and not within the issues of this case; which objection was by the court sustained; to which defendant excepted.

Q. Did you notify Mr. Vance and Mr. James, the gentlemen you have mentioned, or either of them, that the stock of goods at Oklahoma city had been taken from you by the sheriff of that county under this writ of attachment?

Same objection, ruling, and exception as last above.

Q. I will ask you if you notified Mr. Harper S. Cunningham of that fact.

Same objection, ruling, and exception as last above.

Q. Was Mr. Harper S. Cunningham, one of the attorneys for the plaintiff- in this case, present in the store-room in Guthrie at the time the sheriff took possession of the stock of goods from you?

Same objection, ruling, and exception as last above.

Defendant rests.

628 *Testimony of Harper S. Cunningham.*

H. S. CUNNINGHAM, being called as a witness for the plaintiff in rebuttal and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. JAMES:

Q. You may state to the jury what your business is.
A. I am a lawyer.
Q. How long have you been a lawyer?
A. Twenty-two or twenty-three years.
Q. What relation, if any, did you have to a suit entitled E. S. Jaffray & Co. against W. F. Wolfe & Son, pending at one time in this court?
A. I was one of the attorneys who tried the case and who commenced it—that is, I defended it. I had connection with it from the time it was commenced until the present time.
Q. I will get you to state who were the attorneys for the defendants in that case—for the plaintiffs, I mean.
A. The attorneys were Cunningham & Wisby and Bierer & Cotteral—that is, the attorneys for the plaintiffs.
Q. I will get you to state what connection, if any, you had with reference to said case.
A. I was attorney for defendant.
Q. Do you remember the stipulation which has been introduced in evidence here in this case between the attorneys affecting the Jaffray case and also other attachment suits in this court pending against the same defendants?

Objected to as incompetent, irrelevant and immaterial, and not within the issues of the case; which objection was by the court overruled; to which defendant excepted.

A. My statement is that the stipulation does not affect the Jaffray case, but it affects all of the other cases.

Defendant moves to strike out the answer; which motion
629 was by the court overruled; to which defendant excepted.

Q. Do you remember the fact of the stipulation?
A. Yes, sir; I distinctly remember the fact of the stipulation.
Q. I will get you to state to the jury under what circumstances such stipulation was signed.

Objected to as incompetent, irrelevant, and immaterial, and not within the issues in this case and not proper rebuttal; which objection was by the court overruled; to which defendant excepted.

A. The Jaffray case was tried; the defendants had demurred to the evidence (interrupted)——
Q. In that connection state what part of the case was tried when you say the Jaffray case was tried and which stage of the proceedings you refer to.

Objected to as last above and to the competency of the witness and not within the issues; which objection was by the court overruled; to which defendant excepted.

A. The case had been regularly called for trial for the allowance or non-allowance of the attachment, which had been put in issue, and a jury had been empanelled and testimony taken, introduced by the plaintiffs in support of their case and of the allegations tending to sustain the allegations of the attachment, as they supposed. The demurrer to the evidence was interposed by the defendants. This had the effect of discharging the jury, and an argument of the case had taken place before the court upon the demurrer to the evidence. That had been submitted.

Q. Submitted to the court?

A. Yes, sir; submitted to the court and he had taken it under advisement——

Defendant moves to strike out last answer as incompetent, irrelevant, and immaterial and improper evidence in rebuttal, and because the witness is incompetent. Overruled. Exception.

Q. Well, now, state who individually signed said stipulation.

630 Objected to as incompetent, irrelevant, and immaterial and improper evidence in rebuttal and not within the issues in this case; which objection was by the court overruled; to which defendant excepted.

A. About ten o'clock on the evening of the day when the case was finally submitted to the court Mr. George S. Cunningham, of the firm of Cunningham & Wisby, attorney in behalf of E. S. Jaffray & Co. and M. D. Wells & Co. and all of the other cases then pending against W. F. Wolfe & Sons, in which I was attorney for the defendants, and Mr. Bierer, of the firm of Bierer & Cotteral, who had likewise appeared as attorneys in the other cases, came to my office and made me the proposition to let all the other cases pending against Wolfe & Son *to* follow the judgment in the Jaffray case.

Q. Follow the judgment in the Jaffray case—in what part of that case?

A. The judgment which should be rendered in the Jaffray case which had that day been submitted to the court.

Q. Upon the merits?

A. There was no controversy existing as to the merits—as to the amounts owing. The only question was whether the attachment was properly run and whether or not a judgment could be rendered in an attachment case where the matter (interrupted)——

Q. I don't care about the issues; I am asking you in regard to the trial of the case, whether it was on the merits or on the attachment.

A. It was a trial on both, in that the judgment upon the merits depended upon the attachment case.

Defendant moves to strike out the last answer for the reason that it is incompetent, immaterial, and not within the issues in this case and not the best evidence. Overruled. Exception.

A. For the purpose of saving costs and labor and trouble I accepted their proposition and we reduced the agreement to
631 writing and then and there signed it, and they signed it on behalf of the plaintiffs and I signed it on behalf of the defendants.

Q. Now, what paper or writing embodies that agreement or proposition which you have just spoken of?

A. The writing which has heretofore been introduced in evidence and testified to by Mr. Overstreet on yesterday.

Q. And referred to by the parties as the stipulation?

A. Yes, sir; and referred to by the parties as the stipulation.

Q. And that was at what time with regard to the judgment of the court upon the demurrer to the attachment that this stipulation was signed by the parties?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. I am not able now from memory to state the precise time when the court rendered its judgment, but it was between the time the case was submitted to the court and taken under advisement and the time when the court rendered its judgment. It was the night of the day on which the case was submitted to the court and before he had rendered judgment in the Jaffray case.

Defendant moves to strike out this answer for the reason that it is incompetent, irrelevant, and immaterial, and not within the issues in this case, and not proper rebuttal, and not the best evidence; which motion was by the court overruled; to which defendant excepts.

The defendant now moves to strike out all of the testimony given by Harper S. Cunningham relative to any stipulation or agreement made between the attorneys for the parties in the Jaffray case as wholly incompetent, irrelevant, and immaterial, and not within the issues in this case, and not proper rebuttal; which motion was by the court overruled; to which defendant excepted.

632 *Testimony of Louis E. Pitts.*

LOUIS E. PITTS, being recalled as a witness for the plaintiffs in rebuttal, testified as follows:

Direct examination by Mr. JAMES:

Q. Mr. Pitts, you have been on the stand before and sworn in this case?

A. Yes, sir.

Q. You may state to the jury what this book is that you have in your hand.

A. This is Court Journal Number 3 of the records of this court.

Plaintiff offers in evidence pages 356 and 357 of Journal No. 3 just identified by the witness. Objected to as incompetent, irrelevant, and immaterial, and not proper rebuttal, and because it is not a journal entry in this case, but is a different case from the one on trial, and that it does not tend to prove or disprove any of the issues in the case now on trial, and not proper evidence to go to the jury; which objection is by the court overruled; to which defendant excepted.

Counsel further objects for the reason that the case in which that purports to be a journal entry is now pending on appeal in the supreme court of this Territory and is not finally disposed of. Overruled. Exception.

Q. You may state what the book is which you now have.

A. This is the civil appearance docket number one of the district court of Logan county, Oklahoma Territory.

Q. You may state to the court the names of the attachment cases pending in this court on the 22nd day of December, 1891, against W. F. Wolfe & Son.

Objected to as last above. Overruled. Exception.

A. The first case of that nature is No. 360, E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son, filed December 17, 1890.

Q. Who are the attorneys?

A. The appearance docket does not show; the files will
633 show, and I can state from my own knowledge. The next case is No. 361, M. D. Wells & Co. *vs.* W. F. Wolfe & Son, filed on the same day; case No. 362, Rice, Stix & Co. *vs.* W. F. Wolfe & Son, filed on the same day; case No. 367, Alexander Frankenthal & Brother *vs.* W. F. Wolfe & Son, attachment suit, filed December 18, 1890; case No. 368, Sweet, Dempster & Co. *vs.* W. F. Wolfe & Son, attachment suit, filed December 18, 1890; case No. 398, Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son, attachment suit, filed December 26, 1890; case No. 402, John V. Farwell Co. *vs.* W. F. Wolfe & Son, filed Dec. 30, 1890; that was an attachment suit also; that is all that this book shows.

Q. Did you find any others?

A. No, sir.

Q. You may state who were the attorneys in these different attachment suits against the firm of W. F. Wolfe & Son, which cases you have just mentioned before the jury.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

A. Well, I would have to examine the files to get at that.

Q. I don't mean what attorneys represented one particular case, but what different attorneys represented all those cases—that is, how many attorneys in the aggregate represented all the suits?

A. The firms of Cunningham & Wisby and Bierer & Cotteral, my impression is, represented most of the plaintiffs in those suits, but to be accurate I would have to examine.

Q. Who represented the firm of M. D. Wells & Co.?
A. I think Bierer & Cotteral and Cunningham & Wisby.
Q. Who represented Burnham, Hanna, Munger & Co.?
A. I think Mr. Overstreet represented that firm, but whether any of the other attorneys did or not I am not sure.
Q. Who represented the firm of Frankenthal & Bro.?
A. I couldn't say positively about that without an examination of the files. I think some of *think some of* those cases are still
631 pending here and this trial docket will show. The case of E. S. Jaffray is before the supreme court for hearing; the case of M. D. Wells & Co., at present Keaton & Cotteral and Wisby & Hornor represent the plaintiffs, formerly Bierer & Cotteral and Cunningham & Wisby.

By Mr. WISBY: You said the Jaffray case is on appeal to the supreme court.
A. Yes, sir; I said that.

Defendant moves to strike out statement of witness with reference to the Jaffray case. Sustained. Exception.

Case No. 262, Rice, Stix & Co. *vs.* Wolfe & Son, Keaton & Cotteral and Wisby & Hornor are at present attorneys representing plaintiffs; case 367, Alexander Frankenthal & Bro., same attorneys represent the plaintiffs; case No. 368, Sweet, Dempster & Co. *vs.* W. F. Wolfe & Son, same parties represent the parties; case No. 398, case of Burnham, Hanna, Munger & Co., that case does not seem to be on the trial docket at present. The case of John V. Farwell & Co. is not here in this court now.

Cross-examination by Mr. WISBY:

Q. What do you say about the case of John V. Farwell Co.?
A. I said it is not on the trial docket.
Q. Did you look at # 402? What is that case?
A. John V. Farwell Co. I say that case has not been pending in this court since I took charge of this office. It was not on the docket at that time. I don't know what disposition has been made of it because I have not examined.
Q. It is surely pending here.
A. It may be, but it is not on the trial docket and has not been.
Q. Will you look and see about # 402?
A. Yes, sir; it is # 402, and is on the docket. I beg your pardon.

Here counsel reads in evidence pages 356 and 357, Journal No. 3.

635 TERRITORY OF OKLAHOMA, }
County of Logan. }

In District Court.

E. S. JAFFRAY & Co., Pl't'ffs, }
versus } Journal Entry.
W. F. WOLFE & SON, Def's. }

And now, upon this 22nd day of December, A. D. 1891, to which time this cause duly came by successive continuances, the same came regularly on for trial. There *was* present the said plaintiffs, E. S. Jaffray —, by their attorneys, Bierer & Cotteral, Cunningham & Wisby, and Overstreet & Decker, and the defendants in person and by their attorneys, Harper S. Cunningham, W. K. James, and A. H. Ellis, and both parties announcing themselves ready for trial, a jury of twelve good and lawful men of the county of Logan, viz., William True, James Evans, George A. Jasper, S. P. Atherton, J. N. Coulter, L. T. Stein, C. M. Alford, C. D. Stovall, George S. Fenton, A. B. Wolford, William Bennett, and J. K. Edgerly, were duly called, empanelled, and sworn to well and truly try said cause upon the law and the evidence; and thereupon the plaintiffs, by their attorneys, made a statement of their case and the evidence by which they expected to sustain it, and the defendants made a statement of their defense and the evidence they expected to offer in support of it; and thereupon said plaintiffs produced their evidence and submitted their case to the jury and rested their case; and thereupon the said defendants filed a demurrer to the evidence of the plaintiff-; whereupon the court discharged the jury and proceeded to consider said demurrer to the evidence, and the court, having heard the arguments of counsel for both plaintiff- and defendant- and being fully advised in the
636 premises, doth find that there was no testimony whatever introduced by the plaintiff- to sustain the issues in this case; that said action was commenced for a debt not due; that the writ of attachment was wrongfully issued in this case; that the demurrer to the evidence of the plaintiff- should be sustained. Wherefore it is considered, adjudged, and ordered by the court that the demurrer to the plaintiffs' evidence by the defendant- be, and the same hereby is, sustained; that the attachment heretofore issued in this case be, and the same hereby is, dissolved; to which findings, orders, ruling, and judgment the plaintiffs, by their attorneys, then and there excepted; and thereupon the plaintiffs, by their attorneys, made an application to amend the complaint in this case filed, and the court, having heard the application and the objections of the defendant- thereto, granted said leave, and the plaintiff- then and there filed *his* amended complaint; to which ruling of the court the defendants, by their attorneys, then and there excepted; and thereupon it was further considered and adjudged by the court that the above-entitled cause be, and the same hereby is, dismissed, and that the plaintiffs be, and they hereby are, adjudged to pay the costs of this action, taxed at $—, and hereof let execution issue; and

thereupon the said plaintiffs prayed an appeal to the supreme court, which was granted, and they were allowed sixty-eight days from this date in which to prepare and submit their bill of exceptions to this court and plaintiffs be allowed fifty days from this date (January 8, 1892) to file supersedeas bond in the sum of $6,000.00, conditioned as provided by law, to be approved by the court or the judge thereof; and now, on this 21st day of January, A. D. 1892, the said plaintiffs made their application to amend the complaint herein and also the affidavit in attachment herein, which application the court, being fully advised in the premises, denied and overruled; to which ruling the plaintiffs, by their attorneys, then and there duly excepted.

637 *Testimony of Harper S. Cunningham.*

HARPER S. CUNNINGHAM, being recalled as a witness for plaintiffs in rebuttal, testified as follows:

Direct examination by Mr. JAMES:

Q. I believe you stated, Mr. Cunningham, that you had represented the defendants in those different attachment suits?

A. Yes, sir; in all the attachment suits which were pending against them.

Q. I will get you to state what attorneys represented the plaintiffs in those several attachment suits.

A. I am not able to state the names of the attorneys that are subscribed to each of the pleadings or the pleadings in each case. I observe that the M. D. Wells case is Sears, Cunningham & Wisby, and I know that in that case (interrupted)——

Defendant objects to witness testifying from the record as not the best evidence.

By Mr. JAMES: You need not testify from the record, but state what you know from your own knowledge.

A. I know that the firm of Sears, Cunningham & Wisby appeared at very early stages of the case, and I think Judge Sears appeared but once, and after that Cunningham & Wisby appeared at all times when there was anything to do in those cases, and in connection with them Messrs. Bierer & Cotteral. Mr. Bierer especially, of the firm of Bierer & Cotteral, always appeared when there was anything to do in those cases. They appeared jointly—that is to say, no matter whose names were signed to the pleadings, in all of the cases the name of the firm, these firms appeared indiscriminately. I regarded and had reason to regard each of these attorneys as attorneys in all those cases, and the cases were conducted in that way, and in fact all the cases that have been mentioned here on any trial and proceedings had in court followed as it were the Jaffray case; for instance, the judges would on his docket here recite, "Same order as in case number so and so," and the proceedings were all had in that way."

638 Defendant moves to strike out the last answer of the witness as not the best evidence.

By the COURT: That part which relates to the records is stricken out.

Defendant moves to strike out the entire answer as incompetent, irrelevant, and immaterial, and not the best evidence, and not proper evidence in rebuttal, and improper evidence to be produced in the presence of the jury; which motion was by the court overruled; to which defendant excepted.

(Witness continues:) Each time those cases were called in the court Bierer & Cotteral and Cunningham & Wisby appeared, without reference to which firm's name appeared on the pleadings.

Q. Well, you may state what plaintiffs in these attachment suits were represented by attorneys other than the names of the attorneys to the stipulation heretofore testified about.

Objected to as incompetent, irrelevant, and immaterial. Overruled. Exception.

A. John Stone represented one case, Samuel L. Overstreet represented another case; that was an attachment case. I don't now remember any others that were not represented by Bierer & Cotteral and Cunningham & Wisby.

Q. Did Mr. Stone and Mr. Overstreet represent any attaching creditors whose name has not been mentioned here pending in this court?

Objected to as last above. Overruled. Exception.

A. I do not now recall the names that the clerk mentioned of the attachment cases against W. F. Wolfe & Son, but Overstreet represented one in favor of Burnham, Hanna, Munger & Co., and John Stone represented another in favor of some other firm that was not represented by Cunningham & Wisby and Bierer & Cotteral.

Defendant moves to strike out the testimony of the witness because incompetent, irrelevant, and immaterial; which motion is by the court overruled. Exception.

639 Plaintiffs here offers in evidence the petition and summons and these different attachment writs in these respective cases, identified by the clerk and testified to by Mr. Cunningham, in connection with this stipulation referred to, for the purpose of showing the pendency of said suits in this court.

By Mr. WISBY: We admit that those suits were pending in this court at that time. It is admitted by the defendants that the suits referred to were pending at that time and are now pending.

Plaintiffs' offer continued, and for the purpose of showing who was acting as attorneys for the plaintiffs in said causes.

Objected to as incompetent, irrelevant, and immaterial, and not within the issues and not proper rebuttal; which objection was by the court overruled, and the instruments are read in evidence in the following words and figures:

640 (In case No. 361, M. D. Wells & Co. *vs.* W. F. Wolfe & Son, the complaint and attachment writ have been heretofore copies into this record, on pages —, and are not again copied.) The summons in said cause is in the following words and figures, to wit:

THE TERRITORY OF OKLAHOMA, } ss:
Logan County, }

The Territory of Oklahoma to the sheriff of said county, Greeting:

You are hereby commanded to notify W. F. Wolfe, Lewis H. Wolfe, partners as W. F. Wolf and Son, defendant-, that they have been sued by Moses D. Wells, Henry J. McFarland, and Brenton R. Wells, partners as M. D. Wells and Co., plaintiff-, in the district court of the first judicial district in and for said county of Logan, and that unless they answer on or before the 19th day of January, A. D. 1891, the petition of said Moses D. Wells, Henry J. McFarland, and Brenton R. Wells, partners as M. D. Wells & Co., filed against them in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on or before the 29th day of December, A. D. 1890.

Witness my hand and the seal of said court, at Guthrie, Okla. Territory, this 17th day of December, 1890.

T. G. RISLEY, *Clerk,*
[SEAL.] By W. P. MEADOWS, *Deputy.*

Endorsed: Summons. District court, Logan county. Doc. 1, No. 361, page 367. M. D. Wells and Co. *vs.* W. F. Wolf and Son, defendant-. If defendant- fail to appear and answer, the plaintiff- will take judgment for $2,500.21, together with interest thereon. T. G. Risley, clerk, by W. P. Meadows, deputy. Returnable Dec. 29th, 1890. Sears, Cunningham and Wisby, plaintiffs' attorney-. Returned and filed Jan. 20, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy.

Fees.

Service and return	50
Copy	50
Mileage	20
Total	1 20

Return of officer showing service is omitted.

641 In the District Court of Logan County, Oklahoma Territory.

HENRY RICE, WILLIAM STIX, BENJAMIN EISEMAN, Johnathon Rice, David Eis-man, Elias Michael, Partners as Rice, Stix & Co., Plaintiffs,
vs.
W. F. WOLFE, LEWIS H. WOLFE, Partners as W. F. Wolfe & Son, Defendants.
} Complaint.

Come now the above-named plaintiffs, Henry Rice, William Stix, Benjamin Eisman, Johnathon Rice, David Eiseman, Elias Michael, partners as Rice, Stix & Co., and state that the above-named defendants, W. F. Wolfe and Lewis H. Wolfe, partners as W. F. Wolfe & Son, are indebted to them in the sum of seven hundred fifty-four and $\frac{28}{100}$ dollars for goods, wares, and merchandise sold and delivered to them by plaintiffs in the — months of 1890.

That all of said sum is due and defendants refuse to pay the same.

Wherefore plaintiffs pray judgment for seven hundred fifty-four and $\frac{28}{100}$ dollars, debt, damages, and costs.

SEARS, CUNNINGHAM & WISBY,
Attorneys for Plaintiffs.

TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

Joseph Wisby, being duly sworn, deposes and says that he is one of the attorneys for the above-named plaintiffs who are absent from this Territory; that he has read the foregoing petition and knows the contents thereof; that the same is true.

JOSEPH WISBY.

Subscribed and sworn to before me December 17th, 1890.

T. G. RISLEY,
Clerk of District Court,
By W. P. MEADOWS, *Deputy.*

Endorsed: In the district court of Logan county, Oklahoma Territory. (Substituted.) Rice, Stix & Co. *vs.* Wolfe & Son. Complaint. Sears, Cunningham & Wisby, attorneys for plaintiffs.

(The return of officer showing service is omitted.)

642 TERRITORY OF OKLAHOMA, } ss:
Logan County, }

The Territory of Oklahoma to the sheriff of said county, Greeting:

You are hereby commanded to notify W. F. Wolfe and Lewis H. Wolfe, partners as W. F. Wolfe and Son, defendants, that they have been sued by Rice, Stix & Company, plaintiffs, in the district court of the first judicial district in and for said county of Logan, and that unless they answer on or before the 19th day of January, A. D. 1891, the petition of said plaintiffs filed against them in the clerk's office of said county, such petition will be taken as true, and judg-

ment rendered accordingly. You will make due return of this summons on or before the 29 day of December, A. D. 1890.

Witness my hand and seal of said court, at Guthrie, Oklahoma Territory, this 17th day of December, 1890.

[SEAL.] T. G. RISLEY, *Clerk*,
By W. P. MEADOWS, *Deputy*.

Endorsed on back: Summons. District court, Logan county. Rice, Stix & Co., plaintiffs, *vs.* W. F. Wolfe and Son, defendants. If defendant- fail to appear and answer, the plaintiff- will take judgment for $754.28, together with interest thereon from —. Attest: T. G. Risley, clerk, by W. P. Meadows, deputy. Returnable Dec. 29th, 1890. Cunningham & Wisby, plaintiffs' attorney-. Returned and filed Jan. 20, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy.

Fees.

Service and return	50
Copy	50
Mileage	20
Total	1.20

643 *Order of Attachment.*

TERRITORY OF OKLAHOMA, } ss:
Logan County, }

District Court of Logan County.

RICE, STIX & CO., Plaintiff-,
vs.
W. F. WOLFE & SON, Defendant-.

The Territory of Oklahoma to the sheriff of Oklahoma county, Greeting:

You are commanded to attach and safely keep the lands, tenements, goods, chattels, stocks or interest in stocks, rights, moneys, and effects of the defendant-, W. F. Wolfe and Lewis H. Wolfe, partners as W. F. Wolfe & Son, not exempt by law from being applied to the payment of the claims of the plaintiff- Henry Rice, Johnathon Rice, David Eiseman, William Stix, Benjamin Eiseman, and Elias Michael, partners as Rice, Stix & Co., or so much thereof as will satisfy their claim for seven hundred fifty-four & $\frac{28}{100}$ dollars and fifty dollars, the probable costs of this action.

You will make due return of this order forthwith.

Witness my hand and the seal of said court, at Guthrie, Okla. Territory, this 18th day of December, A. D. 1890.

[SEAL.] T. G. RISLEY, *Clerk*,
By W. P. MEADOWS, *Deputy*.

Endorsed: Received this writ on the 19th day of Dec., 1890, and after making diligent search and inquiry I am unable to find any

property belonging to the defendants, W. F. Wolfe & Son, to satisfy this writ. Dec. 31, 1890. C. H. De Ford, sheriff of Oklahoma county. Return, 25c. Returned and filed February 27, 1891. T. G. Risley, clerk. Order of attachment. District court, Logan county. Rice, Stix & Co., plaintiff-, *vs.* W. F. Wolfe & Son, defendant- Returnable forthwith. T. G. Risley, clerk; W. P. Meadows, deputy. Substituted.

644 In the District Court of Logan County, Oklahoma Territory.

ALEXANDER FRANKENTHAL and ALBERT FRANKENthal, Partners as A. Frankenthal & Bro., Plaintiffs,
vs.
W. F. WOLFE and LEWIS H. WOLFE, Partners as W. F. Wolfe & Son, Defendants.
} Complaint.

Come now the above-named plaintiffs, Alexander Frankenthal and Albert Frankenthal, partners as A. Frankenthal & Bro., and state that the above-named defendants, W. F. Wolfe and Lewis H. Wolfe, partners as W. F. Wolfe & Son, are indebted to them in the sum of one hundred ninety-five and $\frac{85}{100}$ dollars, now due for goods, wares, and merchandise sold and delivered to them by plaintiffs in the month of ——, 1890.

That the said sum is past due and defendants refuse to pay the same.

Wherefore plaintiffs pray judgment of one hundred and ninety-five and $\frac{85}{100}$ dollars debt, damages, and costs.

SEARS, CUNNINGHAM & WISBY,
Attorneys for Plaintiffs.

TERRITORY OF OKLAHOMA, *Logan County,* } *ss:*

Joseph Wisby, being duly sworn, deposes and says that he is one of the attorneys for above-named plaintiffs, who are absent from this Territory; that he has read the foregoing petition and knows the contents thereof; that the same is true.

JOSEPH WISBY.

Subscribed and sworn to before me this 18th day of December, 1890.

T. G. RISLEY, *Clerk,*
[SEAL.] By W. P. MEADOWS, *Deputy.*

Endorsed: In the district court of Logan county, Oklahoma Territory. A. Frankenthal & Bro. *vs.* W. F. Wolfe & Son. (Substituted) complaint. Filed December 18th, 1890. T. G. Risley, clerk, by W. P. Meadows, deputy. Sears, Cunningham & Wisby, att'ys for plaintiffs.

645 TERRITORY OF OKLAHOMA, } ss:
Logan County, }

The Territory of Oklahoma to the sheriff of said county, Greeting:

You are hereby commanded to notify W. F. Wolfe & Lewis H. Wolfe, partners as W. F. Wolfe & Son, defendants, that they have been sued by A. Frankenthal & Bro., plaintiffs, in the district court of the first judicial district in and for said county of Logan, and that unless they answer on or before the 19th day of January, 1891, the petition of said plaintiffs filed against them in the clerk's office of said county such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on or before the 29th day of December, 1890.

Witness my hand and seal of said court, at Guthrie, Okla. Territory, this 17 day of December, 1890.

T. G. RISLEY, *Clerk,*
[SEAL.] By W. P. MEADOWS, *Deputy.*

Endorsed: Summons. District court, Logan county. A. Frankenthal & Bro., plaintiffs, *vs.* W. F. Wolfe & Son, defendants. If defendant- fail to appear and answer the plaintiff- will take judgment for $195.85, together with interest thereon. Attest: T. G. Risley, clerk, by W. P. Meadows, deputy. Returnable Dec. 29th, 1890. Cunningham & Wisby, plaintiffs' attorney-. Returned and filed Jan. —, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy.

Fees.

Service and return	50
Copy	50
Mileage	20
Total	1 20

(Return of officer showing personal service is omitted.)

646 TERRITORY OF OKLAHOMA, } ss:
Logan County, }

District Court of Logan County.

A. FRANKENTHAL & BRO., Plaintiff-,
vs.
W. F. WOLFE & SON, Defendant-.

The Territory of Oklahoma to the sheriff of Oklahoma county, Greeting:

You are commanded to attach and safely keep the lands, tenements, goods, chattels, stocks or interest in stocks, rights, moneys, and effects of the defendant-, W. F. Wolfe & Lewis H. Wolfe, partners as W. F. Wolfe & Son, not exempt by law from being applied to the payment of the claims of the plaintiff-, Alexander Frankenthal and Albert Frankenthal, partners as A. Frankenthal & Bro.,

or so much thereof as will satisfy their claim for one hundred ninety-five and $\frac{85}{100}$ — and fifty dollars, the probable costs of this action.

You will make due return of this order forthwith.

Witness my hand and the seal of said court, at Guthrie, Oklahoma Territory, this 18th day of December, A. D. 1890.

T. G. RISLEY, *Clerk*,
[SEAL.] By W. P. MEADOWS, *Deputy*.

Endorsed: Received this writ on the 19th day of Dec., 1890, and, after making diligent search and inquiry, I am unable to find any property belonging to the defendants, W. F. Wolfe & Son, to satisfy this writ. Dec. 31st, 1890. C. H. De Ford, sheriff of Oklahoma county. Return, 25c. Returned and filed February 27, 1891. T. G. Risley, clerk. Order of attachment. District court, Logan county. A. Frankenthal & Bro., plaintiff-, *vs.* W. F. Wolfe & Son, defendant-. Returnable forthwith. T. G. Risley, clerk. W. P. Meadows, dep-ty.

647 In the District Court of Logan County, Oklahoma Territory.

SAMUEL H. SWEET, WESLEY DEMPSTER, CHARLES HUTCHISON, and Hugh W. Mitchell, Partners as Sweet, Dempster & Co.,
vs.
W. H. WOLF- & LEWIS H. WOLFE, Partners as W. F. Wolf- & Son., Defendants.

Come now the above-named plaintiffs, Samuel H. Sweet, Wesley Dempster, Charles Hutchison, and Hugh W. Mitchell, partners as Sweet, Dempster & Co., and state that the above-named defendants are indebted to them in the sum of fourteen hundred and twenty-seven dollars, now due for goods, wares, and merchandise sold and delivered to them by plaintiffs in October & November, 1890; that the sum is due and defendants refuse to pay the same.

Wherefore plaintiffs pray judgment for $1,400.00 debt, damages, and costs.

SEARS, CUNNINGHAM & WISBY,
Att'ys for Pl'ffs.

TERRITORY OF OKLAHOMA, *County of Logan*, } *ss:*

Joseph Wisby, being duly sworn, deposes and says that he is one of the attorneys for the above-named plaintiffs, who are absent from this Territory, and that he has read the foregoing petition and knows the contents thereof; that the same is true.

JOSEPH WISBY.

Subscribed and sworn to before me on this the 18th day of December, 1890.

T. G. RISLEY, *Clerk*,
[SEAL.] By W. P. MEADOWS, *Deputy*.

648 TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

The Territory of Oklahoma to the sheriff of said county, Greeting:

You are hereby commanded to notify W. F. Wolf and Lewis H. Wolf, partners as W. F. Wolf & Son, defendant-, that they have been sued by Sweet, Dempster & Company, plaintiff-, in the district court of the first judicial district in and for said county of Logan, and that unless they answer on or before the 19th day of January, A. D. 1891, the petition of said plaintiffs filed against them in the clerk's office of said court such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on or before the 29th day of December, A. D. 1890.

Witness my hand and seal of said court, at Guthrie, Okla. Territory, this 18th day of December, A. D. 1890.

T. G. RISLEY, *Clerk.*

[SEAL.] By W. P. MEADOWS, *Deputy.*

Endorsed: Summons. District court. Doc. 1, No. 368, page 374. Sweet, Dempster and Co. *vs.* W. F. Wolf and Son. If defendant- fail to appear and answer the plaintiff- will take judgment for $1,400.00, together with interest thereon. Attest: T. G. Risley, clerk, by W. P. Meadows, deputy. Returnable Dec. 29, 1890. Sears, Cunningham & Wisby, plaintiffs' attorney-. Returned and filed Jan. 20, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy.

Fees.

Service and return	50
Copy	50
Mileage	20
	1 20

(This writ was served personally. Return omitted.)

649 THE TERRITORY OF OKLAHOMA, } ss:
Logan County, }

District Court of Logan County.

SWEET, DEMPSTER & CO., Plaintiff-, }
vs.
W. F. WOLFE & SON, Defendant-. }

The Territory of Oklahoma to the sheriff of Oklahoma county, Greeting:

You are commanded to attach and safely keep the lands, tenements, goods, chattels, stocks or interest in stocks, rights, moneys, and effects of the defendant, W. F. Wolf- and Lewis H. Wolfe, partners as W. F. Wolfe & Son, not exempt by law from being applied to the payment of the claims of the plaintiff-, Samuel H. Sweet, Wesley Dempster, Charles Hutchison, and Hugh W. Mitchell,

partners as Sweet, Dempster and Company, or so much thereof as will satisfy his claim for fourteen hundred dollars, and fifty dollars, the probable costs of this action.

You will make due return of this order forthwith.

Witness my hand — the seal of said court, at Guthrie, Okla. Terr'y, this 18 day of December, A. D. 1890.

T. G. RISLEY, *Clerk.*
W. P. MEADOWS, *Deputy.*

Endorsed: Order of attachment. District court, Logan county. Doc. 1, No. 368, page 374. Sweet, Dempster & Co., plaintiff-, *vs.* W. F. Wolfe & Son, defendant-. Amount sworn in, $1,400.00; probable costs, $50.00. Returnable forthwith. T. G. Risley, clerk. W. P. Meadows.

Received this writ on the 19th day of Dec., 1890, and after making diligent search and inquiry I am unable to find any property belonging to the defendants, W. F. Wolf- & Son, to satisfy this writ. Dec. 31, 1890.

C. H. DE FORD,
Sheriff of Oklahoma County.

Return, 25c.
Returned and filed February 24, 1891.

T. G. RISLEY, *Clerk.*

(This writ was served personally. Return omitted.)

650 (In case No. 398 the petition and order of attachment have heretofore been copied into this record; the summons cannot be found.)

The following are the papers introduced in case No. 402, John V. Farwell Co. *vs.* W. F. Wolfe & Son:

In the District Court of Logan County, Oklahoma Territory.

JOHN V. FARWELL, CHARLES B. FARWELL, JOHN K. HARMAN, JOHN T. CHUMASERO, and JOHN V. FARWELL, JR., Partners as John V. Farwell & Co., Plaintiffs,

vs.

W. F. WOLFE and LEWIS H. WOLFE, Partners as W. F. Wolfe & Son, Defendants.

Come now the above-named plaintiffs, John V. Farwell, Charles B. Farwell, John K. Harman, John T. Chumasero, and John V. Farwell, Jr., partners as John V. Farwell & Co., and state that the above-named defendants are indebted to them in the sum of five hundred and twenty-three & $\frac{91}{100}$ dollars, now due for goods, wares, and merchandise sold and delivered to them by plaintiffs in the month of October, 1890; that the sum is due and defendants refuse to pay the same.

Wherefore plaintiffs pray judgment for $523.91, debt, damages, and costs.

SEARS, CUNNINGHAM & WISBY,
Att'ys for Pl'ffs.

TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

Joseph Wisby, being duly sworn, deposes and says that he is one of the attorneys for above-named plaintiffs, who are absent from this Territory, and that he has read the foregoing petition and knows the contents thereof; that the same is true.

JOSEPH WISBY.

Subscribed and sworn to before me on this the 30th day
651 of *subscribed and sworn to before me on this the 30th day of* December, 1890.

[SEAL.] T. G. RISLEY, *Clerk.*

Summons.

TERRITORY OF OKLAHOMA, }
County of Logan. }

The Territory of Oklahoma to the sheriff of said county, Greeting:

You are hereby commanded to notify W. F. Wolfe and Louis Wolfe, partners as W. F. Wolfe and Son, defendant-, that they have been sued by John V. Farwell & Co., plaintiff-, in the district court of the first judicial district in and for said county of Logan, and that unless they answer on or before the second day of March, A. D. 1891, the petition of said John V. Farwell & Co. filed against them in the clerk's office of said court such petition will be taken as true and judgment rendered accordingly. You will make due return of this summons on or before the second day of March, A. D. 1891.

Witness my hand and seal of said court, at Guthrie, Ok. Ty., this 30th day of December, A. D. 1890.

[SEAL.] T. G. RISLEY, *Clerk.*

Endorsed: Summons. District court, Logan county. John V. Farwell & Co., plaintiff-, *vs.* W. F. Wolfe & Son, defendant-. If defendant- fail to appear and answer the plaintiff- will take judgment for $523.91, together with interest from date. Attest: T. G. Risley, clerk. Returnable March 2, 1891. Returned and filed Jan. 20th, 1891. T. G. Risley, clerk, by W. P. Meadows, deputy.

Fees.

Service and return	50
Copy	50
Mileage	20
Total	1 20

652 TERRITORY OF OKLAHOMA, }
Logan County. }

District Court of Logan County.

JOHN V. FARWELL & CO., Plaintiff-,
vs.
W. F. WOLFE and LOUIS WOLFE, Partners as W. F. Wolfe & Son, Defendants.

The Territory of Oklahoma to the sheriff of said county, Greeting:

You are commanded to attach and safely keep the lands, tenements, goods, chattels, stocks or interest in stocks, rights, moneys, and effects of the defendants, W. F. Wolfe and Louis H. Wolfe, partners as Wolfe & Son, not exempt by law from being applied to the payment of the claims of the plaintiff-, John V. Farwell & Co., or so much thereof as will satisfy the plaintiffs' claim for five hundred and twenty-three and $\frac{21}{100}$ dollars and fifty ($50.00) dollars, the probable costs of this action.

You will make due return of this order on the second day of March, A. D. 1891.

Witness my hand and the seal of said court, at Guthrie, this 30th day of December, A. D. 1890.

[SEAL.] T. G. RISLEY, *Clerk.*

653 The plaintiff- moves the court that all the evidence in this case pertaining to the writs of attachment in these several cases, which was introduced by the defendants, be stricken out for the reason that the writs of attachment in said cases have been dissolved and are adjudicated as dissolved by this court, and that all other evidence introduced by the defense in this case be stricken out for the same reason, and that all other evidence introduced by the defense be stricken out for the same reason, except the evidence relative, directly or indirectly, to the value of the property in controversy.

By the COURT: The court will not pass upon this proposition until the evidence upon both sides is finally closed and all before the court.

Now, at this time, the plaintiff- offers in evidence what purports to be a certified copy of a judgment in the case of M. D. Wells, Henry J. McFarland, and Brenton R. Wells, partners as M. D. Wells & Co., *vs.* W. F. Wolfe & Son, heretofore identified by the stenographer as Exhibit Seven, and asks to have the same made a part of the record.

Here plaintiffs withdraw the instrument above offered.

By the COURT: It appearing that the plaintiffs in this case desire to withdraw the instrument, and it further appearing that the same has not been read in evidence or in any way considered, the plaintiffs are permitted to withdraw the same; to which ruling of the court the defendant excepts; which exception is allowed.

Testimony of W. L. Harvey.

W. L. HARVEY, being recalled as a witness for the plaintiffs in rebuttal, testified as follows:

Direct examination by Mr. JAMES:

Q. You have already been sworn in this case, I believe, Mr. Harvey?

A. Yes, sir; I have.

Q. I will get you to state whether or not you were in pos-
654 session of the stock of goods mentioned as the Guthrie stock of goods, referred to by the witnesses in this case, in December, 1890.

Objected to as incompetent, irrelevant, and immaterial and not proper rebuttal; which objection was by the court overruled. Exception.

A. I was.

Q. I will get you to state whether or not you assisted in taking an inventory of said stock of goods about that time or soon afterwards.

Objected to as last above. Overruled. Exception.

A. I did.

Q. I will get you to state whether or not you have such inventory or invoice or appraisement.

A. I have (handing attorney a book).

Q. Let me look at the book. State to the jury what the book you now hold is.

A. This is the inventory of the goods that were in the Guthrie store here which were taken from me by the sheriff.

Q. State who assisted you in taking said inventory or appraisement.

A. Mr. Figg, Mr. Palmer, Mr. Van Voorhees, and Mr. Louis H. Wolfe.

Q. Mr. Figg and Mr. Palmer are the men who have already testified in this case?

A. Yes, sir.

Q. Now, I will get you to state what was the amount of the invoice or inventory, if you can, by referring to any memoranda which was made at the time.

Objected to as not the best evidence and incompetent; which objection was by the court overruled. Exception.

A. The inventory amounted to fifteen thousand five hundred and seventy-two dollars and five cents ($15,572.05) outside of what was taken on the writ of replevin of Burnham, Hanna, Munger & Co.

Q. Did that sum include or not include anything for carriage?

655 Defendant moves to strike out the last answer as incompetent and irrelevant; which motion was by the court overruled. Exception.

A. That included ten per cent. added for carriage and insurance.

Q. I will get you to state upon what basis said inventory or appraisement was made.

A. It was made on the basis of the cost of the goods, except in some instances where there were remnants or the goods were worn—shelf-worn. Those were appraised according to what we considered their actual value.

Q. I will get you to state whether any cost-mark was consulted at the time or any other aids by way of arriving at the value of the goods.

A. The cost-mark was consulted, and also the bills from the house.

Q. (Handing witness a notice.) In whose handwriting is that notice?

A. This notice is in the handwriting of Mr. Van Voorhees.

Q. State whether or not you inventoried the goods which were taken by Burnham, Hanna, Munger & Co. under the writ of replevin.

A. I did.

Q. Well, now, state whether or not that amount is included in the amount you have mentioned heretofore.

A. It is not.

Q. State the amount of the goods so taken by Burnham, Hanna, Munger & Co.

A. The goods taken on that writ of replevin by Burnham, Hanna, Munger & Co. amounted to $1,680.33.

Q. State, relatively speaking, whether the goods were new or old which were taken by Burnham, Hanna, Munger & Co.

Objected to as leading; which objection was by the court overruled. Exception.

Q. They were new goods, almost exclusively. They took out the best.

Q. State what was the condition of those goods as to the
656 original tags, cost-marks, and brand of make or manufacture.

A. In some cases the brands were torn off, or the outside wrappers. Frequently there were packages that had not been opened at all. The tags, as far as I could see, were on the goods, generally; occasionally they would be off, but as a general thing they were on the goods.

Q. State what you personally had to do with the removal of the tags and brands of the goods while you had possession of them.

A. Nothing at all.

Q. What instructions, if any, did you give about the removal of

the tags and brands of the manufacturer or their description of the goods?

A. I gave no instructions whatever in regard to them.

Q. What, if anything, do you know of the tags, brands, or description of the goods being removed while you were in possession of the goods?

A. I know nothing of any tags or brands being removed while I was in possession of the goods.

Q. I will ask you that same question with reference to the removal or destruction of the tags, brands, or description of the goods with regard to the stock at Oklahoma city while you were in possession.

A. There was none removed that I know of.

Q. What was the condition of the stock at Oklahoma city with regard to the removal or destruction of the brands, tags, and other descriptions of the goods?

A. The condition there was about as I have stated here. I had no trouble in finding the tags generally of the goods; occasionally they would be a tag that would be lost, but usually the tags were on the goods.

Q. State what disposition you made of the goods as to putting them in shape, in proper place in the store, the condition they were left in at the close of your inventory or appraisement there.

A. They were put back on the shelves about as they were when we started to take the inventory.

Q. In what condition was the stock at the time you closed
657 your inventory or at the time the sheriff took possession?

A. I think the stock was in very good condition.

Q. Now, Mr. Harvey, I will get you to state how long you had been in Oklahoma city prior to your taking charge of the stock there.

Objected to as a repetition. Overruled. Exception.

A. I went to Oklahoma city in April, 1889, and remained there clear up until this time that has been referred to, with the exception of occasionally being away. I was there probably five-sixths of the time, at least, from the time I went there in the spring of 1889 to the time I left there or to the time of December 15th.

Q. Where did you do your business, if you had any business, or did any business between April of 1889 and December of 1890?

A. Most of the time I was in the Wills-Widmeyer block after that was built.

Q. That was in Oklahoma city, was it?

A. Yes, sir; in Oklahoma city. Before that time it was in a frame building.

Q. Now, you have stated before on the stand here as to having been away from here the early part of December, 1890, before taking charge of this stock, and as having been at Minneapolis, Kansas, I believe you testified, did you not? I will get you to state when you went to Minneapolis at that time and how long it was that you went there prior to your return here.

Objected to as incompetent, irrelevant, immaterial, and not proper rebuttal testimony. Overruled. Exception.

A. I went up there about eight or ten days before the 15th of December, 1890, on my own private business and for the purpose of removing my family to Oklahoma city.

Q. When did you move your family to Oklahoma city?

A. I started from Minneapolis on the morning of the 15th about 7 o'clock and got to Oklahoma city about midnight of that night.

658 Q. What communication, if any, had you had with any of the plaintiffs in this case with regard to this stock of goods prior to December 15, 1890?

Objected to as incompetent, irrelevant, immaterial, and improper rebuttal. Overruled. Exception.

A. I had no communication whatever with any one.

Q. What telegram, if any, did you receive from the plaintiff Vance before you reached Oklahoma city on the 15th of December, 1890?

Objected to as last above. Same ruling. Exception.

A. I received no telegram from him.

Q. Then, what knowledge had you, if any, on or shortly before December 15th, 1890, as to where Mr. Vance was on that day or shortly prior to that time?

Objected to as incompetent, irrelevant, and immaterial, and not proper rebuttal. Overruled. Exception.

A. I had no knowledge whatever as to where he was.

Q. What knowledge, if any, had you as to whether Mr. Vance was coming to Oklahoma city or Guthrie on December 15th, or at any time just before that?

A. I had no knowledge at all on that subject.

Q. What knowledge had you, if any, as to Mr. Vance's having anything to do with the Wolfe stock of goods at Oklahoma city or at Guthrie, Oklahoma, prior to your reaching Oklahoma city on December 15th, 1890?

A. I had no knowledge whatever.

Q. What arrangement or understanding had you with the plaintiffs or with Mr. Vance at any time prior to December 15, 1890, as to your taking possession or control of the stock of goods, or having anything to do with it?

A. I had no arrangement or understanding with Mr. Vance or any of these plaintiffs.

659 Q. What knowledge or information had you from any one on behalf of the plaintiffs or on behalf of any one representing them that you was to have anything to do with this stock of goods prior to December 15, 1890?

A. I had no knowledge whatever; knew nothing about the business.

Q. What business, if any, had you which called you to Oklahoma city about December 15, 1890?

By the COURT: I think he has stated that, Mr. James.

Cross-examination by Mr. WISBY:

Q. What date did you take possession of this stock down here—the Guthrie stock—Mr. Harvey?
A. On the 16th of December, 1890.
Q. In the morning or afternoon?
A. It was in the afternoon.
Q. When did you begin invoicing those goods?
A. I think it was the next day.
Q. The 17th?
A. I think so.
Q. When did you complete that invoice—how many days did it take you to make the invoice?
A. I completed it on the 22nd of December, some time in the afternoon.
Q. When did the sheriff take possession from you on the writ of attachment?
A. Well, he ejected me from the store on the afternoon of the 22nd.
Q. When did he take possession?

Objected to as calling for a conclusion. Overruled. Exception.

A. Well, the sheriff broke in on the 19th.
Q. Was not that the marshal with a writ of replevin that broke in on the 19th?
A. No, sir; it was Sheriff Shockey.
Q. Was a deputy marshal in there with a writ of replevin before that time?
A. No, sir. I will explain that if you will let me.
660 Q. Just answer the question and we will get through a good deal quicker.

By the COURT: If you desire to make the explanation you may do so.

A. A deputy marshal, Ransom Payne, served a writ of replevin on me on the street, on the 19th, and I examined the writ and told him, All right; if the goods are there you can have them. We went around to the east door and I had a key—no, the door was locked, and a man, I think it was Mr. Figg, was inside, and I called him, and he unlocked the door. While the marshal and Mr. Milligan were going in with some appraisers that day the sheriff and his posse rushed in also, before we could get the door locked. Right inside we had a scuffle over the key, with Mr. Figg, and I think it was the deputy sheriff drew his revolver.
Q. Then, on the 19th the marshal was in there with his appraisers and Mr. Milligan to identify the goods that he took out—was that all?
A. Yes, sir.

Q. They went to work at that business immediately, did they?

A. Yes, sir, and identified them by the marks and brands—identified some of them.

Q. What they took out they identified or claimed to identify?

A. They claimed to; yes, sir.

Q. By the marks and brands on the goods?

A. I don't know how they identified them; I couldn't tell positively; they took them out.

Q. How long did it require them to take them out?

A. Two or three days—that was in the afternoon of the 19th—about three days.

Q. Had they identified their goods and taken them out of there before you completed your invoice?

A. No, sir.

Q. They had identified all their goods, had they not, and appraised them?

A. I don't know; they were in there when I was turned out, and they hadn't removed the goods, but had put them to one side.

661 Q. They had commenced taking out their goods and putting them to one side on the 19th, had they not?

A. On the 19th; yes, sir.

Q. And you continued in there completing your invoice with the assistance of the parties you have named—Figg, Palmer, Louis Wolfe, and Van Voorhees—until the 22nd?

A. Yes, sir.

Q. Mr. Figg had been clerking in the store there for some time, had he not?

A. I don't know.

Q. Didn't you understand he had been a clerk there?

A. I think he was; Mont. Palmer was, I know, and I think Mr. Figg was, but I am not sure.

Q. Louis—he had had charge of the store, had he?

A. Yes, sir.

Q. You say that you didn't take off any of the mill stamps of the goods, or brands or marks or tags?

A. No, sir.

Q. You think that Mr. Milligan was in there trying to identify those goods, on the afternoon of the 19th, by marks and brands and tags, do you not?

A. I don't know how he was identifying his goods, but I presume that was the way he was trying to identify his goods.

Q. Who instructed you to take that invoice?

A. Mr. Vance and Mr. James.

Q. Did you get the instruction at Oklahoma city before you came here?

A. I got the instruction from Mr. Vance at Oklahoma city.

Q. Before you came here to Guthrie?

A. Before I came here, I got the instructions from Mr. James here.

Q. You had not seen Mr. James until you had come from Oklahoma city at the instance of Mr. Vance to take charge of this stock?

A. No, sir; I didn't see Mr. James until I came here.

Q. I believe you said you commenced about the 19th, invoicing?

662 A. No; I think it was either the 17th or 18th.

Q. You knew at the time you were making the invoice that the sheriff had a writ of attachment and was trying to get into the store to seize the stock, did you not?

Objected to as incompetent and immaterial; which objection was by the court sustained. Exception.

Q. Well, the sheriff was in on the afternoon of the 19th and tried to take possession under the writ, did he not?

Objected to as immaterial; which objection was by the court sustained. Exception.

Q. Didn't the sheriff come in on the afternoon of the 19th with some of his deputies or assistants and remain there from that time until you left?

Objected to as immaterial. Overruled. Exception.

A. Certainly he did.

Q. Did he claim or say to you that he took possession under the writ of attachment?

A. He did.

Q. I believe that you testified that you are the brother-in-law to W. F. Wolfe?

A. Yes, sir.

Q. And uncle of Louis?

A. Yes, sir.

Q. And a brother to D. A. Harvey?

A. Yes, sir.

Q. You say that the tags and cost-marks were on the goods generally; generally on the goods when you were invoicing them?

A. Yes, sir.

Q. When you went in there?

A. Yes, sir.

Testimony of Charles Figg.

CHARLES FIGG recalled for plaintiffs in rebuttal:

663 By Mr. JAMES: You have been sworn to testify in this case?

A. I have.

Q. I will get you to state whether you were present when the sheriff took the invoice of the Oklahoma City stock heretofore referred to in this case.

A. I was not.

Testimony of Edgar Scott.

EDGAR SCOTT, being recalled as a witness for plaintiffs in rebuttal, testified as follows:

Direct examination by Mr. JAMES:

Q. I will get you to state whether you were present and took part in an inventory taken by the defendant of this Oklahoma City stock that has been mentioned in this case?

A. Yes, sir; I did.

Q. I will get you to state what was said there in the presence of the defendant as to the valuation he or those who assisted him were placing upon the goods at the time of the taking of the goods.

Objected to as incompetent, irrelevant, and immaterial, hearsay, and not proper rebuttal. Overruled. Exception.

Q. I mean anything that was said to the sheriff or in his presence there?

A. By Mr. Crawford?

Q. No, sir; not in regard to Mr. Crawford, but what was said about the inventory that the sheriff was taking or those that were assisting him with regard to the price that they were putting on them?

A. I think he told the appraisers to put the goods at what they would bring to be thrown out on the market at wholesale price.

Q. State what was said there in his presence or to him as to the valuation that the appraisers were placing upon the goods at the time by anybody, in regard to the valuation that they were putting upon the goods.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained. Exception.

664 Q. Just state, Mr. Scott, what was said by yourself or by any one else between the appraisers, in the presence of the sheriff, as to the valuation or price that they were placing upon the goods at the time they were taking the inventory that was taken there by the sheriff.

Objected to as incompetent, irrelevant, immaterial, and improper rebuttal—hearsay; which objection was by the court overruled. Exception.

A. I was doing the clerical work, and as the two appraisers would get the stuff down and give it to me I would tell them it was worth more money. In a great many instances they would put the thing in without any regard to what the stuff was worth, or anything else.

Defendant moves to strike out as incompetent, irrelevant, and not shown that the defendant was present. Overruled. Exception.

Q. I will get you to state to the jury the condition of that stock with regard to the destruction or loss or removal of tags, cost-marks, or brands of the manufacturers, or other descriptions of the things in the store there at the time Mr. Harvey took possession, during the time he was in possession of the stock.

A. There was no more destruction of the tags than was absolutely necessary. In selling the goods—as we would have to sell off of a piece of goods we would tear off the outside tags, of course, but we never destroyed any tags during the invoice.

Q. How did the condition of the stock of goods with regard to the destruction or removal of the tags and brands of the manufacturers, etc., of the goods at that time compare with the tags and brands on the goods several months prior to that while you were in the store?

A. They were about the same.

Cross-examination by Mr. WISBY:

Q. Who were the appraisers of the stock of goods appointed by the sheriff?

A. Mr. Mitchell and Mr. Pence. They were both merchants of Oklahoma city.

Q. They were in the mercantile business there at Oklahoma city?

665 A. I think they were both at that time in the mercantile business. Mr. Mitscher was, at least.

Q. You was simply a clerk, was you not?

A. Yes, sir.

Q. You was not one of the appraisers?

A. Yes, sir.

Q. What aged men were these?

A. Mr. Mitchell, probably thirty-two; Mr. Pence, probably twenty-eight or 29, I should judge.

Q. You say the sheriff told you to appraise them at the wholesale price in the market?

A. Yes, sir.

By Mr. JAMES: I neglected to ask you in regard to the tags, etc., of the stock of goods here at Guthrie. Did you take part in the invoice here?

A. No, sir. I know nothing whatever about it.

Q. Was it in regard to the wholesale price on the market or the price that the goods would sell at forced sale that the invoice was taken at Oklahoma city?

A. That was what I meant—by what the goods would bring on the market; what they were actually worth.

By Mr. WISBY: What would be the wholesale price?

A. Just what any one would give for them.

By Mr. JAMES: When you say selling the goods at wholesale, did you mean in ordinary job lots, where they do a wholesale business, or in case of a sale, where they are put up and sold in bulk at forced sale? What do you mean by that?

A. I think his instructions were to put the price at just what they could be sold at—what they were actually sold at; to be put on the market and sold out in job lots or the whole shooting match.

By Mr. WISBY:

Q. Were you present at the sale of the stock of goods?

A. Yes, sir.

Q. Several different merchants were there, and dealers be-
666 sides were there, and dealers besides Mr. Millikan?

A. The only ones that I remember of were bidding on the stock you mean?

Q. Yes, sir.

A. Herman Turk & Co., & *Co.*, there at Oklahoma city. Mr. Mitscher was there, and there was a Jew—I think he was from Carthage, Missouri—who looked through the stock very carefully, and they were bidding on it. Those were the only three that I remember.

Q. Were there not some St. Joe parties there?

A. I don't think there was; no, sir; I don't remember.

Q. There were several different parties bidding on the goods, were there not?

A. Yes, sir.

Testimony of Charles Figg.

CHARLES FIGG, being recalled as a witness for plaintiff in rebuttal, testified as follows:

Direct examination by Mr. JAMES:

Q. I will get you to look at this book here (handing witness a book). You may state what, if anything, you know in regard to that book—what it is.

A. That is the invoice of the Guthrie stock.

Q. What has been called the Guthrie stock here of W. F. Wolfe & Son?

A. Yes, sir.

Q. What, if anything, had you to do with that invoice of the Guthrie stock?

A. Well, I helped to measure and count the goods and call out what I had measured and counted.

Q. I will get you to state what, if anything, you had had to do with that stock prior to the taking of this invoice.

A. Well, I had worked in the stock about thirteen or fourteen months.

Q. And I believe you have already testified that you were the head man for the firm here in the store?

A. Yes, sir.

667 Q. I will get you to state upon what basis that inventory was made, referring to it in that book and mentioned by you in your evidence.

A. Well, it was to be a fair inventory of the value of the goods.

Defendant moves to strike out the answer as incompetent; which motion was by the court sustained. Exception.

Q. I want you to state upon what basis with regard to the original cost was all of the stock or a large part of the stock invoiced.

A. The majority of the stock was invoiced at the cost price—what they cost at wholesale.

Q. Did you know the cost at wholesale?

A. Yes, sir.

Q. Did you have access to the invoice bills from the wholesale houses?

A. Yes, sir.

Q. And you knew the cost-mark?

A. Yes, sir; I did.

Q. You put it on a great many of the goods?

A. I put it on a majority of the goods: yes, sir.

Q. Now, state how you inventoried or appraised the goods that were not worth their original value—the goods which had depreciated in value by being shelf-worn or old, damaged or otherwise. How did you inventory such goods?

A. Why, we generally cut them to what we thought they would bring—what they were really worth.

Q. What allowance, if any, was made for carriage for the goods?

A. There was no allowance made in the cost-mark.

Q. What allowance, if any, was made for carriage in the inventory which you took at that time?

A. None whatever.

Q. Do you know whether the sum total of the inventory taken of the Guthrie stock included carriage or not; will you look and see whether the sum total does or not?

A. Yes, sir; it does.

Q. I will get you to state——

668 Q. I will get you to state from your knowledge of the stock of goods and from the inventory made at that time and from the memoranda from the invoice which is now before you if you can state what was the reasonable market value of the stock of goods at the time Mr. Harvey took charge of it on behalf of the mortgagees.

A. Well, I think it was worth $17,000, anyhow.

Q. I will get you to state what was the condition of the stock of goods as to the destruction, removal, or absence of tags, original cost-marks, or description of the goods.

A. Well, I think it was in good condition.

Q. How did the condition of the goods as to tags and brands or other description of the goods at the time Mr. Harvey took possession of it or was in possession of it compare with the condition of the stock as to tags, brands, and description for weeks and months prior to that time?

A. I think it was very much the same.

Q. You have been acquainted with other stocks of goods, have you not?

A. Yes, sir; I have had occasion to work in several different stocks.

Q. How did the tags and brands and descriptions on these goods compare with the tags, brands, and descriptions on other stocks that you have worked in?

A. I think very much the same. There is a good many things in any dry-goods stocks that has no mark of any kind on them after the first yard is sold off.

Q. I will get you to state what was the condition of the Oklahoma City stock with regard to tags, marks, and brands on the goods.

A. About the same as the stock here.

Q. Had you seen the stock at Oklahoma city prior to the time Mr. Harvey took possession of it?

A. I had.

669 Q. How were the tags, brands, and descriptions on the goods prior to December, 1890, in comparison to the brands, tags, and descriptions on the goods after Mr. Harvey took possession of them?

A. There was no notic-able difference. I judge they were just the same.

Cross-examination by Mr. WISBY:

Q. You reside at Topeka, Kansas?

A. Yes, sir.

Q. You came from there here, did you?

A. Yes, sir.

Q. At whose solicitation did you come here to attend this trial?

A. Well, I came here at Mr. Vance's solicitation.

Q. Did you come at the solicitation of Mr. Louis Wolfe, too?

A. No, sir; I came at Mr. Vance's solicitation.

Q. Didn't Mr. Louis Wolfe solicit you to come?

A. No, sir.

Q. You came on the same train that he did?

A. We came together, if you require to know plainly.

Q. You started from home together—from Topeka?

A. We left Topeka together. We could not very well leave otherwise.

Q. And you came here together?

A. Yes, sir.

Q. Do you know Mr. Harvey—D. A. Harvey?

A. Yes, sir; I am acquainted with Mr. Harvey.

Q. Did you know him before you came here?

A. Just slightly.

Q. How long have you known him?

A. Well, I have known him slightly for about six years, I guess.

Q. You had been working in this stock fourteen months before it was closed out here?

A. Yes, sir.

Q. You had been working for Mr. Wolfe or Wolfe & Son?

A. Yes, sir; I had.
Q. Who had charge of the stock while it was here?
A. Louis H. Wolfe.

Q. Do you know about the quantity of goods in the store
670 in June as compared with the quantity of the goods at the time of this inventory?

A. Well, no; I don't know as I do.
Q. Do you have an opinion about the value of the goods at that time and at the time you took the invoice?
A. Well, I don't know as I could make any kind of a statement in regard to that. I never helped invoice the goods until we invoiced them the last time, and that was the only way I could have any means of knowing.
Q. How is that?
A. I say I never helped invoice the goods until we invoiced them after the 15th.
Q. They hadn't been invoiced at any time while you were here?
A. No, sir; they had not.
Q. Can't you estimate about the relative value of the stock in the latter part of June and first of July and the time that you took this invoice?
A. No; I don't know as I could.
Q. Was there any material difference in the quantity and value of the goods between the two dates?
A. Well, there might have been and there might not have been; I couldn't say.
Q. You would not be able to say that there was any material difference?
—. I wouldn't be able to say that there was or that there was not.

Testimony of Louis H. Wolfe.

LOUIS H. WOLFE, being called as a witness for plaintiff in rebuttal, testified as follows:

Direct examination by Mr. JAMES:

Q. You have heard certain letters read in evidence here today as exhibits to certain depositions, which letters were written by your father. You remember them, do you not?
A. Yes, sir.

671 Q. I will get you to state what, if anything, you had to do with the sending of those letters.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. I know nothing at all about the letters; I did not see them before they were written—after they were written, rather.

Q. What did you know, if anything, about the contents or the existence of those letters until after the failure?

Objected to as last above. Same ruling and exception.

A. Nothing at all.

Q. I will get you to state, Mr. Wolfe, if you have seen your father lately.

A. I have not seen him since some time in May of last year.

Q. Have you seen him the last week or two?

A. No, sir.

Q. How old is your father?

A. Why, I don't know exactly; I would judge he was very close to 70 years of age—sixty-nine or seventy.

Q. What is his condition of health?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which defendant excepted.

A. His condition of health is very poor, so I understand from his letters and from mother's letters.

Q. What was it when you saw him last?

A. Well, he was in bad condition.

Cross examination by Mr. WISBY:

Q. How long since you have seen your father?

A. Some time in May last year when I saw him last.

Q. I will ask you if at the time you were in business here in Oklahoma, both at Oklahoma city and at Guthrie, and also
672 before you came here and during all the time you were in business, if your father was not the senior member of the firm of W. F. Wolfe & Son.

A. He was; yes, sir.

Q. You have heard several letters read, in which he refers to the fact that you had referred certain letters to him and he had answered them. Was that true? Did you ever refer any such correspondence to him?

Objected to as not the best evidence and incompetent and calling for a conclusion of the witness; which objection was by the court sustained: to which defendant excepted.

Q. While you were in business here and in charge of the stock of goods here in Guthrie of W. F. Wolfe & Son, when you received letters making inquiries as to the credit or financial standing of the firm of W. F. Wolfe & Son from eastern creditors, one or more of such eastern creditors, did you not refer those letters or turn them over to your father to answer?

A. All the correspondence that came to me was turned over to father. Any such inquiries would be turned over with it; yes, sir.

Q. Who employed you to assist in taking this invoice here after the goods were turned over to Mr. Harvey or Mr. Vance?

A. Mr. Will Harvey.

Redirect examination by Mr. JAMES:

Q. What knowledge, if any, did you have of your father or yourself being at Chicago to see Henry W. King & Co. since the first of 1890?

Objected to as incompetent, irrelevant, and immaterial and not proper rebuttal; which objection was by the court overruled. Exception.

A. I think neither my father nor myself were in Chicago during 1889 or 1890.

Q. I will get you to state what you know of yourself or your father going to St. Joseph, Missouri, to see Tootle, Hosea &
673 Co. during the year 1890.

Objected to as incompetent, irrelevant, and immaterial and not proper rebuttal testimony; which objection was by the court overruled. Exception.

A. Neither of us went to St. Joseph during the year 1890.

Q. I will get you to state what you know of any of the firm of Henry W. King & Co. or any of the firm of Tootle, Hosea & Co. being to see yourself or your father in person during the year 1890, prior to your failure.

Objected to as last above. Overruled. Exception.

A. None of the members of either of those firms saw either my father or myself in 1890.

Q. I mean, of course, so far as *I* know.

A. Of course, so far as I know.

Q. Did you hear anything of their visiting down here?

A. None. Father would have told me if they had (interrupted)——

Defendant moves to strike out as incompetent, irrelevant, and immaterial and not proper rebuttal and hearsay. Overruled. Exception.

A. He would afterwards have told me if they had visited him; if that had been the case.

Q. I will get you to state whether or not Mr. Munger, of the firm of Burnham, Hanna, Munger & Co., was not down here in Guthrie shortly before the failure.

Objected to as incompetent, irrelevant, immaterial, and not proper rebuttal; which objection was by the court overruled; to which defendant excepted.

A. Yes, sir.

Q. State whether or not he was in your store here at Guthrie.

A. Yes, sir; he admired our stock very much.

On motion, the latter part of the answer was stricken out
674 as not responsive to the question. Exception.

Q. State what examination or inspection or investigation, if any, he made at that time of your stock of goods.

Objected to as irrelevant, immaterial, and incompetent and not proper rebuttal; which objection was by the court overruled; to which defendant excepted.

A. Why, we walked through the stock several times. He was in the store probably half an hour, I would judge, and from the way he looked around I judged he was examining the stock.

Defendant moves to strike out the answer of the witness as incompetent and not responsive; which motion was by the court overruled. Exception.

Q. What, if anything, did he say about the stock here at Guthrie to you?

Objected to as incompetent, irrelevant, immaterial, and not proper rebuttal; which objection was by the court overruled; to which defendant excepted.

A. He said we had a very nice, clean stock, and it was in very good condition; complimented us especially on the order in which it was kept and the arrangement of the goods.

Q. Do you know whether he went to Oklahoma city or not?

A. He said to me that he did.

Defendant moves to strike out on grounds stated in last objection and as hearsay. Overruled. Exception.

Q. Did he speak of having seen your father or the store there or not?

Objected to as last above. Overruled. Exception.

A. He said he had been in the store, but had not seen my father.

Cross examination by Mr. WISBY:

Q. Your recollection has improved, has it not, since you were on the stand for the defendant?

Objected to as incompetent, irrelevant, and immaterial. Sustained. Exception.

675 Q. Mr. Munger was passing through here with an excursion party, was he not, and stopped off a while?

A. Yes, sir.

Q. He had no business transactions with you of any kind?

A. No, sir.

Q. When did you come to the Territory the first time?

A. I came to Oklahoma at the opening of the country.

Q. Did you remain here during that year?

A. I remained here, I think, until November of that year; October or November, but I think November.

Q. Where was your father at that time?

A. Father was in Topeka.

Q. Do you know whether your father visited St. Joseph or Chicago or Kansas City, of your own knowledge now, those months while you were here and he was in Topeka?

A. I do not.

Q. Where did you remain from November to June following?

A. In Topeka.

Q. Where was your father from November to June following?
A. Oklahoma city.
Q. Do you know of your own personal knowledge whether or not your father went during those months either to Chicago, St. Joseph, or Kansas City?
A. I do not.
Q. What time did you come to Guthrie?
A. I think it was the 6th of June, 1890.
Q. Did you remain here until you went out of business?
A. I did.
Q. Your father remained at Oklahoma city?
A. Yes, sir.
Q. Of your own personal knowledge, you don't know whether he left there some evening and went to Kansas City or St.
676 Joseph and returned the next day?
A. No, sir; I do not.
Q. Of your own personal knowledge you don't know but what he might have gone to Chicago and returned?
A. Yes, sir.
Q. During these months when you were away from your father in 1889 and 1890, you don't know but what some member of the firm of Tootle, Hosea & Co. or Henry W. King & Co. visited your father?
A. I do not. He would have written me, probably, if they would.
Q. I am not asking you that; you are very brisk to answer questions.

Answer stricken out on motion. Exception.

Testimony of A. H. Vance.

A. H. VANCE, being recalled as a witness for the plaintiffs in rebuttal, testified as follows:

Direct examination by Mr. JAMES:

Q. Mr. Vance, you have been in the court-room and heard read these different letters as exhibits to these depositions, containing statements of the financial condition of the firm of W. F. Wolfe & Son, written by that firm through Mr. Wolfe, Senior?
A. Yes, sir.
Q. I will get you to state, Mr. Vance, what knowledge, if any, you had of the existence of such letters or statements of that kind or nature prior to receiving this chattel mortgage mentioned here in this case.
A. I had no knowledge whatever.
Q. What knowledge had you of any statements of the firm of W. F. Wolfe & Son and William F. Wolfe or any member of the firm of William F. Wolfe & Sons or either of those firms as to their financial condition for the purpose of getting credit?

A. I had no knowledge whatever of any statement of any kind that they ever made.

677 Q. What knowledge had you, if any, of their great indebtedness, if these was a great indebtedness existing or owing by the firm of W. F. Wolfe & Son prior to your coming down here in December, 1890?

A. I knew about the indebtedness for which I was security, but I did not know anything about the purchase of goods in Oklahoma until after I came here. I never was in Oklahoma until the 13th, I believe it was, of December, 1890.

Q. Mr. Vance, I will get you to state what knowledge or information, if any that you know of, that the Bank of Topeka, Topeka, Kansas; the Central National Bank of Topeka, Kansas; the firm of Tootle, Hosea & Co., and the firm of Henry W. King & Co. had of your taking any security or conveyance of real estate at Topeka, with regard to the indebtedness of W. F. Wolfe & Son, prior, I mean, to the taking of this chattel mortgage, or at that time even.

Objected to as incompetent, irrelevant, and immaterial and improper rebuttal; which objection was by the court overruled. Exception.

A. I don't think that they, any of them, had any knowledge of it whatever.

Q. Did you communicate what you had done with reference to securing yourself, or what you had done in connection with any transfer of any real estate in Topeka to you—did you communicate that to any of the parties plaintiff in this suit?

Objected to as incompetent, irrelevant, immaterial, not proper rebuttal, and for the reason that the knowledge of the agent is the knowledge *to* the principal; which objection was by the court overruled; to which defendant excepted.

A. I did not.

Q. I will ask you, Mr. Vance, whether or not you ever entered into any plan, scheme, design, or fraud or conspiracy with any of the other plaintiffs in this case or with W. F. Wolfe & Son or either member of that firm or of the firm of W. F. Wolfe & Sons for the purpose of hindering, cheating, delaying, defrauding, or in

678 any manner injuring or affecting their creditors of the firm of William F. Wolfe & Son or W. F. Wolfe & Sons.

Objected to as incompetent, irrelevant, immaterial, asking the witness for a conclusion, to the competency of the witness, and the same is not proper evidence in rebuttal, as leading and suggestive; which objection was by the court overruled; to which defendant excepted.

A. I did not, of any kind whatever.

Q. I will get you to state what knowledge or information, if any, you had of any fraud, plan, design, or act or conduct of the firm of W. F. Wolfe & Son or William F. Wolfe & Sons or either member of either of such firms in hindering, cheating, delaying, or defraud-

ing any of their creditors up to the time of taking this chattel mortgage, if there was any such fraud on the part of the said William F. Wolfe & Son or William F. Wolfe & Sons.

Objected to as last above; which objection was by the court overruled; to which defendant excepted.

A. I had no knowledge whatever of anything of that kind.

Q. I will get you to state whether you have seen William F. Wolfe, Senior, lately or not.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. I saw him last Sunday and Monday.

Q. I will get you to state what his condition is physically, Mr. Vance.

Same objection, ruling, and exception as last above.

A. He is in very poor health.

Q. State whether or not he is able to be away from home or attend court.

Objected to as above and the witness not shown to be competent. (Question withdrawn.)

Q. Just state his condition, then—what his physical condition is.

Objected to as incompetent, irrelevant, immaterial, improper rebuttal and to the competency of the witness. Overruled. Exception.

679 A. Well, he is affected in such a way that his bladder is affected in some way, so that he cannot leave. He cannot get away from home for any great length of time. It is necessary for him to use instruments in order to draw water. He cannot do it otherwise.

Defendant moves to strike out as immaterial and incompetent. Overruled. Exception.

Q. State what his general condition of health is as to strength or feebleness or otherwise.

Objected to as above and as not best evidence and improper rebuttal. Overruled. Exception.

A. His general health is not good. He has failed a good deal and is rather feeble.

Cross-examination by Mr. WISBY:

Q. I would ask you if you did not know prior to coming here that Mr. Wolfe or W. F. Wolfe & Son were owing money, and the creditors were after them to collect it.

A. I did not, excepting the day I was notified in one instance that a suit had been brought for a small amount.

Q. That was what brought you here to this country, was it not?
A. Yes, sir; partially.
Q. You heard that before you left Topeka?
A. Yes, sir.
Q. Who communicated that fact to you?
A. Mr. W. F. Wolfe.
Q. Was it by telegram or by letter?
A. It was by letter.
Q. Have you got that letter with you?
A. I have not.
Q. What have you done with it?
A. I don't know. I have never thought of it since.

680 Q. Did he say anything in that letter further; that there were a large number of bills for goods that he had bought since he had been here in Oklahoma which were just coming due now, and it was time for you to come in?

A. He did not.
Q. Anything to that effect?
A. Not a thing of that kind.
Q. If it was only a small bill that they were trying to collect of a hundred dollars or so, did that make you uneasy and cause you to come here from Topeka and cause you to see about your debt?
A. It didn't make me uneasy at all.
Q. Didn't you state that you supposed the other creditors from whom he had been buying goods since he had been in Oklahoma Territory here would come in and you came to see about it before the other creditors?
A. That was after I came down.
Q. You heard of it after you came down before you took the mortgage, about the other creditors?
A. About some of them; yes, sir.
Q. Didn't you find out before you took that mortgage that he owed from twelve to twenty thousand dollars for goods that he had bought since he had been here?
A. I found out what I have stated before. I got to talking with him——
Q. I am not asking you for the conversation.
A. I will have to tell you that to tell you what I know about it.
Q. Did you find that out, that he owed from twelve to twenty thousand dollars?
A. I didn't find that out; he said something about its being about fourteen thousand.
Q. Was not that between 12 and $20,000?
A. That was between $12,000 and $20,000, but it was not from $12,000 to $20,000. I will state it just as it was.

681 Q. That was before you took this mortgage?
A. Yes, sir; that was.

Q. That was the first day you arrived, was it?
A. Yes, sir; I think it was.
Q. Now, how did it come that you kept that deed to your wife until you took this mortgage and returned home and arrived home

at Topeka on the night—about midnight of the 16th or noon of the 17th, and immediately had your deed recorded?

Objected to as not cross-examination and immaterial and a repetition; which objection was by the court overruled. Exception.

A. I said before so far as it not being on record before that it was forgotten, so far as I know. I have no recollection of why it was not, but it was not put on record.

Q. You say that both Louis H. Wolfe and his wife were here in Oklahoma Territory when you left and returned home?

A. Yes, sir.

Q. You left on the afternoon of the 16th, did you not?

A. I think not; I think I left the morning of the 16th. I am not sure, however, how that was.

Q. You left them both here in Oklahoma Territory?

A. I did.

Q. How came it that the deed from Louis to his wife, made two or three days before for the Topeka property, was recorded within five minutes—I mean filed within five minutes of the time that you filed your deed for record to your wife from W. F. Wolfe and wife?

Objected to as not cross-examination and assuming a fact not proven and a repetition; which objection was by the court sustained. Exception.

Q. Didn't Louis H. Wolfe or his wife give you a deed to the Topeka property conveying the title from Louis to his wife to take with you to Topeka and have it recorded as quick as you arrived there?

682 A. I have no recollection of it at all if they did.

Q. Not a bit?

A. No, sir.

Q. Did they not tell you that it was for a certain place in Topeka and for you to be sure and put it on record immediately after your arrival in Topeka?

A. They did not; nothing of the kind.

Q. Did they ask you to see Mr. Clark and have him record it?

A. They did not; nothing of the kind.

Q. Will you state that you did not take that deed with you when you went to Topeka from here?

A. I will not state that I did not, but I have no recollection of doing it.

Q. Well, these various notes that was owing to the creditors at Topeka and King & Co. and Tootle, Hosea & Co. were given or renewed a short time before the Wolfes left Topeka to go to Oklahoma Territory, in the spring or summer of 1890; is that a fact?

Objected to as not the best evidence; which objection was by the court sustained. Exception.

Q. I will ask you if it is not a fact that just prior to leaving Topeka that these notes were in some instances given to the firms

that I have named or renewed, so that the parties could come down here with a view of opening up business and establishing a large credit, and that by the time they were due, some of them, in the latter part of the year, after they had gotten all the goods they could and turned them into money, you was to come and take the balance of the goods in order to secure yourself and the other relatives of the Wolfes.

A. There was not anything of that kind whatever, in the least, of any kind.

Q. Is it not a matter of fact that you did come here shortly after the principal part of those notes were due and to be renewed and about the time the bills for thousands and thousands of dollars was due for the goods that they had bought after they came here
683 and took the stock?

Objected to as a number of questions in one, assumes facts not proven, and is not proper cross-examination; which objection was by the court sustained. Exception.

Q. Are you a physician—practicing physician?

A. No, sir; I am not.

Q. Have you ever practiced medicine?

A. I have not.

By a JUROR:

Q. Mr. Vance, did you or Mr. Wolfe first suggest the mortgage business?

A. I did.

Q. Did he raise any objection to it?

A. No, sir.

Testimony of John R. Mulvane.

JOHN R. MULVANE, being called as a witness for plaintiff in rebuttal, testified as follows:

Direct examination by Mr. ELLIS:

Q. Mr. Mulvane, have you been present during the trial of this case a good deal of the time?

A. Yes, sir.

Q. Have you listened to the reading of sundry letters and statements purporting to be from W. F. Wolfe—to have been written by W. F. Wolfe, the senior member of the firm, signed by W. F. Wolfe & Son, and sent to different creditors; have you heard those letters read?

A. Yes, sir.

Q. Mr. Mulvane, when did you first get any knowledge or information or notice of any kind that any such letters as those had been sent out?

Objected to as incompetent, irrelevant, and immaterial and not proper rebuttal testimony; which objection was by the court overruled; to which defendant excepted.

A. I never heard of such letters till I came down here.

Q. Did you in any manner have any notice or knowledge or information of any letters—of any of those letters or any similar
684 letters—having been written by the firm to any of their creditors before you accepted the mortgage in this case?

Objected to as incompetent, irrelevant, and immaterial, and not proper rebuttal; which objection was by the court overruled; to which defendant excepted.

A. No, sir.

Q. Mr. Mulvane, when you accepted this mortgage in this case as president of the Bank of Topeka, did you have any notice or knowledge or information of any kind that W. F. Wolfe & Son had given that mortgage with a fraudulent intent to hinder, delay, or defraud or injure their creditors or any of them?

Objected to as last above. Overruled. Exception.

A. I did not.

Q. In taking that mortgage did you intend to aid or assist or serve in any way W. F. Wolfe & Son in any effort or intent that they might have had to cheat or hinder or delay or defraud or injure any of their creditors?

Objected to as incompetent, irrelevant, immaterial, assuming, asking the witness for a conclusion, not the best evidence, and not proper rebuttal; which objection was by the court overruled; to which defendant excepted.

A. No, sir.

Q. Mr. Mulvane, before or at the time or after the firm of W. F. Wolfe & Son moved from Topeka to Oklahoma Territory, did you make any agreement or have any understanding of any kind or nature whatever with them that they were to come down here and establish a credit and buy goods and then turn the goods over to you and other creditors to satisfy your debts?

Objected to as last above. Overruled. Exception.

A. No, sir; I have never been guilty of or a party to any kind of a fraud, and I do not have to do that kind of business.

685 Q. Did you have any notice or knowledge that W. F. Wolfe & Son, in coming from Topeka to Oklahoma, intended to do any such thing?

Objected to as to the last preceding question; which objection was by the court overruled. Exception.

Q. Did you have any notice or knowledge or belief or understanding of any kind that when W. F. Wolfe & Son came down here, or after they came down here or before they came down here, that the purpose of their coming down here was to establish their credit and buy goods on credit for the purpose of turning the goods over to yourself or any other of their creditors existing at the time they were in Topeka?

Objected to as last above. Overruled. Exception.

A. No, sir; none whatever.

Q. Mr. Mulvane, before that mortgage was given and before you were notified that it had been given on the 17th day of December, 1890, did you have any notice or knowledge that W. L. Harvey was to be chosen as the custodian of the stock of goods?

Objected to as incompetent, irrelevant, immaterial, not proper evidence in rebuttal; which objection was by the court overruled; to which defendant excepted.

A. I don't think I ever met Mr. W. L. Harvey or knew him until I knew him here. I had none whatever; no communication with him.

Q. Did you enter into any combination or scheme with anybody that Mr. Vance should come down here and take this mortgage on this stock of goods and put Mr. W. L. Harvey or anybody else in charge of it?

Objected to as above. Overruled. Exception.

A. No.

Cross-examination by Mr. WISBY:

Q. You say that you do not have to do that kind of business, Mr. Mulvane?

A. No, sir; that would be committing fraud, and I don't commit any fraud.

Q. I will ask you if Judge Clark does not now owe you that $5,000 note, and has told you that he was under obligations
686 to pay it; that he had received a conveyance of real estate in Oklahoma city of the value of eight thousand dollars, which amply protected him, and he would pay the note, or words to that effect.

A. No, sir.

Q. You had no conversation of that kind? Never knew of him having any indemnity made to him?

Excepted to as misconduct on the part of the counsel asking the question. Overruled.

Q. I will ask you if you do not know that he has been indemnified by W. F. Wolfe by the conveyance of real estate at Oklahoma city valued at some eight thousand dollars and to protect him as security upon that note.

Objected to as improper cross-examination, incompetent, irrelevant, and immaterial. Sustained. Exception.

Q. Mr. Mulvane, you had conversations with Mr. Vance several times prior to his coming here to take that chattel mortgage in reference to looking after the security on those notes, have you not, held at your bank?

A. Yes, sir.

Q. You had requested him to look after the matter for you?
A. Yes, sir.

Redirect examination by Mr. ELLIS:

Q. Do you mean to say that you employed Mr. Vance as attorney to represent you in that matter?
A. No, sir.
Q. Did you give him any employment of any kind?
A. No, sir.
Q. In what way? Did you request him to protect you?
A. No, sir.
Q. Any other way than as a surety on the note?
A. No other way except as endorser on the paper.
687 Q. Never at any time?
A. No, sir.
Q. Did you have any knowledge that W. F. Wolfe & Son were indebted to Mr. Vance?
A. No, sir.
Q. And did you know that Mr. Vance was upon their notes—surety upon other notes than the ones at your bank?

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court overruled. Exception.

A. I did not.
Q. Did you have any notice or knowledge prior to the giving of this chattel mortgage and the acceptance of it that Mr. Vance had received any conveyance of any real estate in Topeka or his wife had received any as security for the debt or for any debt owing by W. F. Wolfe & Son to him or to his wife or in connection with such debt?
A. None whatever.
By Mr. WISBY: When you understood what Mr. Vance had done in the way of taking the security down here you ratified his acts, did you not?
A. Yes, sir.
Q. Very promptly?
—. ——.
Q. Mr. Vance is a practicing lawyer in Topeka, and was in 1890, was he?
A. Yes, sir.

Testimony of Edwin Knowles.

EDWIN KNOWLES, being recalled as a witness for plaintiff- in rebuttal, testified as follows:

Direct examination by Mr. ELLIS:

Q. Mr. Knowles, did you ever enter into any agreement or combination or arrangement or understanding with W. F. Wolfe & Son or either of them or anybody else or with any of the plaintiffs in

this case or anybody by which an arrangement was entered into that W. F. Wolfe & Son were to remove from Topeka down to Oklahoma and there obtain credit and get goods on credit, and
688 then subsequently turn the goods over to yourself and with the other plaintiffs in this case—your bank and the other plaintiffs in this case or anybody else—and to cheat and defraud the creditors that they got the goods from in Oklahoma?

Objected to as incompetent, irrelevant and immaterial, and not proper rebuttal testimony and to the competency of the witness; which objection was by the court overruled. Exception.

A. I did not.

Q. Did you ever have any knowledge, notice, or information or belief that W. F. Wolfe & Son or either member of the firm came down from Topeka to Oklahoma for any such purpose or with any such intent?

Objected to as above. Same ruling and exception.

A. I did not.

Q. Did you ever have any notice or knowledge before this mortgage was given and accepted and ratified by your bank that A. H. Vance had taken any conveyance of any real estate in Topeka to secure in his own name or in his wife's name, to secure a debt from W. F. Wolfe & Son to him?

Objected to as above. Same ruling and exception.

A. I did not.

Q. Did you have any notice or knowledge or belief or understanding at any time prior to the time of the giving of this chattel mortgage and the acceptance of it by your bank that W. F. Wolfe & Son or either of them were indebted to A. H. Vance?

A. I did not.

Q. Did you have any knowledge or information that Mr. Vance was liable as surety upon their notes?

A. No; I did not; the only notes on which I knew of him being surety was the ones at our bank.

Q. You have been in court a good deal of the time during this trial, have you not?

A. Yes, sir.

Q. While in court have you heard read a number of letters purporting to have been written by W. F. Wolfe & Son, and
689 especially written by W. F. Wolfe—letters and statements written to the creditors of W. F. Wolfe & Son; you heard those read here in court?

A. Yes, sir; I heard them.

Q. Did you ever have any notice or knowledge or information that any such letters or statements had been made or written by W. F. Wolfe & Son or either of them at any time before you accepted the mortgage upon which this action is based in this case?

Objected to as incompetent, irrelevant, immaterial, not the best

evidence, and asking for a conclusion and not proper rebuttal; which objection was by the court overruled. Exception.

A. I did not.

Q. Did you ever know or have any information or belief that W. F. Wolfe & Son had made any false or fraudulent representations to any of their creditors for the purpose of obtaining goods on credit of any kind?

Objected to as last above; which objection was by the court overruled. Exception.

A. I did not.

Q. Did you have any notice or knowledge at any time before you accepted this mortgage upon which suit was brought in this action that A. H. Vance was coming down here to Oklahoma Territory, Guthrie, and Oklahoma city and going to take a mortgage upon this stock and put W. L. Harvey in possession of it?

Objected to as last above and asking witness for a conclusion; which objection was by the court overruled. Exception.

A. I did not.

Q. Now, to what extent, if at all, were you acquainted with W. L. Harvey before this suit was commenced?

Objected to as above. Same ruling and exception.

A. I don't think I ever met him. I don't recollect of ever having met him.

Q. Now, Mr. Knowles, when you received and accepted the mortgage on behalf of your bank in this action, did you have any
690 notice or knowledge or information or belief that in giving that mortgage W. F. Wolfe & Son or either of them intended to hinder, delay, defraud, or injure any of their creditors?

Objected to as to last preceeding question. Overruled. Exception.

A. I did not.

Q. What was your purpose in receiving it?

A. To get security for the debt.

Q. Had you any other purpose of any kind whatever?

A. No, sir.

Q. Did you intend in receiving it to aid W. F. Wolfe & Son or anybody else in injuring anybody?

Objected to as last above. Overruled. Exception.

A. I did not.

Cross-examination by Mr. KEATON:

Q. You are acquainted with Mr. Mulvane and the Bank of Topeka, are you?

A. Yes, sir.

Q. How far is your bank situated from the Bank of Topeka?

A. One block.

Q. What is the length or width of a block in Topeka?

A. It is between five and six hundred feet, I think; I am not certain. I can spell it out for you. I know the number of lots and the width of the lots.

Q. Your bank is a corporation, you say?

A. Yes, sir.

Q. Has how many directors?

A. Nine.

Q. You have a credit board and a discount board?

A. That consists of the president, cashier, and assistant cashier.

Q. You are the cashier, I believe?

A. Yes, sir.

Q. And how many other officers are there besides the nine
691 directors, the president, cashier, and assistant cashier?

A. No other officers; those compose the officers of the bank.

Q. How long have you known W. F. Wolfe & Son?

A. I don't think that I have ever known the old gentleman; I don't think I have ever seen him.

Q. Well, how long have you known A. H. Vance?

A. I think from the summer of 1885 or 1886.

Q. Now, do you remember when you had last seen Mr. A. H. Vance in regard to these notes that he and William F. Wolfe and Louis H. Wolfe owed you prior to the time that he came down here?

A. No, sir; I don't know when I had seen him.

Q. Can you approximate about the time that you last saw him prior to the time that he came to Oklahoma?

A. Not for some time.

Q. I mean with reference to having a conversation with him in regard to the notes on which he was security.

A. I couldn't tell the time. I saw him several times during the summer.

Q. He was looking after your interests?

A. No, sir; we were looking after our own interests. We were looking to him as security, to pay the notes; we were trying to get him as security to take care of the notes.

Q. Still, you had renewed those notes several times?

A. Under protest; yes, sir.

Q. You did not take any legal proceedings?

A. No, sir.

Q. You do not mean the notes were protested for non-payment?

A. No, sir; we renewed them under protest, I say.

Q. They were never placed in the hands of anybody for collection except your own and Mr. Vance's?

A. No, sir; they were never placed in Mr. Vance's hands for collection, never at all.

692 Q. Now, you accepted this chattel mortgage?

A. We did.

Q. That is, you ratified what Mr. Vance had done in the matter of taking the chattel mortgage?

A. Yes, sir.

Q. You knew shortly after Messrs. Wolfe & Son had come to Oklahoma of the fact that they had gone away from Topeka and removed their entire stock of goods away from there, didn't you.?

A. I knew when they moved the first part down here, and shortly after they moved the second time; I did not know it until after they moved the second time.

Q. About how long afterwards did you know it?

A. I don't know exactly; I think about the first of July was about the time that I knew that they had moved the balance of their stock.

Q. Did you take any steps at that time to enforce the collection of your notes?

A. No special steps except to see Mr. Vance; I saw Mr. Vance and asked him to have the notes paid.

Q. That was all you did?

A. Yes, sir; I would like to correct one statement I made. I said the only officers of our bank was the president, cashier, and assistant cashier; I omitted the vice-president; he is not an active officer; takes no part in the management of the bank.

Q. Your bank is a national bank?

A. Yes, sir.

Testimony of John R. Mulvane.

J. R. MULVANE being recalled for further cross-examination.

Cross-examination by Mr. KEATON:

Q. Your bank is a corporation, I believe, Mr. Mulvane?

A. Yes, sir.

Q. You are president, I believe?

A. Yes, sir.

693 Q. What other officers are there of the bank?

A. Vice-president, active service; cashier, active service, and assistant cashier, active service.

Q. Yours is a national bank?

A. No, sir; a State corporation.

Q. How many directors, if any?

A. Eleven.

Q. How long have you known Mr. Vance?

A. Oh, I think since 1875.

Q. You knew him in Topeka during all that time?

A. Yes, sir.

Q. How far is your place of business from his, if you know?

A. Well, when he was county attorney about a block, I think, part of the time, and two blocks.

Q. How long have you known William F. Wolfe and Louis H. Wolfe?

A. From the time shortly after they came to Topeka.

Q. Do you remember about the year?

A. No, sir; I do not.

Q. You knew of the fact of their moving away from Topeka and coming to Oklahoma, something along about the first of June, 1890?

A. I knew of the first removal; I did not know of the last until after they had gone.

Q. About how long afterwards?

A. A few days.

Q. How many times had your notes been renewed prior to the time that they removed to Oklahoma?

A. I have not got the notes here.

Q. Several times?

A. Yes, sir.

Q. What did you do when you learned that they had moved out of the city and taken all their effects of any kind, if anything, with reference to the collection of your notes?

694 Objected to as repetition. Sustained. Exception.

After argument by counsel court reverses his ruling. Exception.

A. We urged payment.

Q. Who did you urge to pay it?

A. Urged Mr. Vance.

Q. I am asking what you done immediately after you found these parties had left there—moved their store down here.

A. There was nothing done.

Redirect examination by Mr. ELLIS:

Q. You have spoken of the officers of your bank. I want to ask you who has charge of the important business of the bank.

Objected to as incompetent, irrelevant, and immaterial and improper redirect examination; which objection was by the court overruled; to which defendant excepted.

A. The president.

Q. As a matter of fact, who does make the important loans in that bank?

Objected to as above and as calling for a conclusion. Overruled. Exception.

A. As to loans of $500 or more, the president and discount board make they—usually the president.

Q. Is the president's office right in the bank?

A. Yes, sir.

Q. In sight of everything that is going on in the bank?

A. Yes, sir; on duty all the time.

Q. The first one there in the morning, Mr. Mulvane, and last one at night?

A. No, sir; I am the last one always, not the first one.

By Mr. KEATON: You say you were on duty in that bank all the time?

A. Yes, sir.

Q. And you are on duty now, are you?
A. My vice-president is filling my desk. I am on duty when I am there.
Q. Then, they do run the bank in your absence, I suppose?
A. Yes, sir.

695 *Testimony of D. A. Harvey.*

D. A. HARVEY, being called and sworn as a witness for the plaintiff in rebuttal, testified as follows:

Direct examination by Mr. JAMES:

Q. Where do you live?
A. At Oklahoma city.
Q. Where does W. F. Wolfe live?
A. He lives about a mile from there.
Q. How long has he been living there?
A. Since the fall of 1889, I think, October.
Q. At the same place?
A. No; not in the same place.
Q. But living at Oklahoma city?
A. Yes, sir.
Q. I will get you to state whether you have heard these letters which were read as exhibits to depositions containing statements by W. F. Wolfe & Son of their financial condition to different creditors.
A. I have heard some of them read, and I think I have heard them all in the other case, the Jaffray case, four years ago.
Q. Now, Mr. Harvey, I will get you to state whether or not you had any knowledge of these statements by W. F. Wolfe & Son, or by either one of the firm, of their financial condition made to their several creditors prior to the giving of this chattel mortgage that has been mentioned in this case.

Objected to as incompetent, irrelevant, immaterial, and not proper rebuttal; which objection was by the court overruled. Exception.

A. I had no knowledge whatever of any letters that he had written or representations that he had made to creditors.
Q. What knowledge had you, if any, of any representations or statements, either oral or written, of their financial condition made by the firm of W. F. Wolfe & Son or W. F. Wolfe & Sons or either of them to their creditors or anybody for the purpose of obtaining credit prior to the giving of the chattel mortgage mentioned in evidence?

696 Objected to as incompetent, irrelevant, and immaterial to the competency of the witness, and not proper testimony; which objection was by the court overruled. Exception.

A. I never knew anything about those things until the fall of

1891, when the Jaffray case was on trial and those letters were read.

Q. I will get you to state what knowledge, if any, you had of the indebtedness owing by William F. Wolfe or William F. Wolfe & Son or Sons to A. H. Vance, referred to in the chattel mortgage in evidence, prior to the giving of this chattel mortgage.

Objected to as last above. Overruled. Exception.

A. I had no knowledge at all of such indebtedness or any evidence except what I was on. I thought I was on the whole thing and was not keeping very close track of it. The bankers will agree with me in it.

Q. I will ask you to state what knowledge, if any, you had prior to giving this chattel mortgage in evidence of any conveyance from Louis H. Wolfe and wife to Mrs. Vance or William F. Wolfe and wife to Mrs. or Mr. Vance.

Objected to as last above; which objection was by the court overruled; to which defendant excepted.

A. I know nothing about the conveyance or conveyances.

Q. Mr. Harvey, I will get you to state what, if anything, you had in the way of information of W. L. Harvey being chosen or to be chosen to take care of this stock of goods for the mortgagees prior to the time that he was chosen and selected for that purpose.

Objected to as above. Same ruling and exception.

A. I did not know anything about it until several days afterwards, when he wrote me about it.

Q. I will get you to state what knowledge you had, if any, of any attempt, design, or conspiracy of fraud of William F. Wolfe & Son or William F. Wolfe & Sons, or either of them, to hinder, cheat, and defraud their creditors, if such were the case, prior to the giving of this chattel mortgage.

697 Objected to as incompetent, irrelevant, and immaterial, and asking the witness for a conclusion, and improper rebuttal; which objection was by the court overruled. Exception.

A. I knew nothing about it or anything of that kind.

Q. At the time of the chattel mortgage or prior to that time?

Objected to as above. Same ruling and exception.

A. I don't know anything about it until long after the chattel mortgage had been executed.

Q. Mr. Harvey, I will ask you if you, with the other plaintiffs in this case or with anybody else, have conspired with one another or with William F. Wolfe & Sons or William F. Wolfe & Son, or either of them, for the purpose of hindering, cheating, or defrauding any of the creditors of William F. Wolfe & Son or W. F. Wolfe & Sons, or either of those firms.

Objected to as last above. Overruled. Exception.

A. I know nothing of any conspiracy on his part or on the part of any of these mortgagees of that nature.

Q. I will get you to state what your object was, if you say you had no knowledge of this chattel mortgage that was given until afterwards.

A. No, sir; I had no knowledge of it until after it was given.

Q. I will ask you what your purpose was or intention in ratifying that chattel mortgage, if you did so ratify it.

A. Our object was to secure these creditors, because I was not able to secure them myself. I was financially embarrassed at that time.

Cross-examination by Mr. KEATON:

Q. How long have you known the firm of William F. Wolfe & Son or either member of that firm?

A. Well, I have known them for a long time—about thirty years, I guess.

Q. You have known them, then, when they were in business in Cincinnati and Topeka as well as when here?

A. Yes, sir; but I lived in Kansas when they lived in Cincinnati, though.

698 Q. Do you know of their failure in Cincinnati?

Objected to as assuming a fact not proven; which objection was by the court sustained. Exception.

Q. You say that William F. Wolfe, the senior member of the firm of Wolfe & Son, lives about a mile from Oklahoma city and has lived there from the year 1889 until the present time?

A. Yes, sir.

Q. Where did you live during that time, Mr. Harvey?

A. Well, my home was nominally in Oklahoma city, but I was not there much of the time.

Q. Is it not a fact that Mr. Wolfe lived out on your farm or claim during a good part of that time?

A. No, sir; he was on a claim that I had a soldier's declaratory on in 1889.

Q. Was he not also on your claim in 1890?

A. I had nothing to do with the claim; I had relinquished. It was a claim that there was a good many contestants on, and I got out of it.

Q. You knew, did you not, that the firm of William F. Wolfe & Son were insolvent when they came to Oklahoma and had been prior to that time?

A. On the contrary, I knew nothing of that kind. I had frequent conversations with both members of the firm, and was persuaded that I knew all of their indebtedness. I thought their stocks were twice as large as they proved to be, and was more surprised than anybody when I heard that they had incurred other indebtedness down here and as much as they did.

Q. Now, Mr. Harvey, I will ask you if you did not know then

that this whole firm or the senior member of this firm with his other brothers failed several years ago in Cincinnati for one hundred thousand dollars, and only were able to pay fifty cents on the dollar, and that they were insolvent, and that William F. Wolfe, the senior member of the firm, was insolvent from that time on down until the time he failed in Oklahoma.

A. I do not know anything of that kind, because it is not true.

699 Q. They did not fail in Cincinnati?

Objected to as incompetent. Sustained. Exception.

Q. You are a brother-in-law of William F. Wolfe, Senior?
A. Yes, sir.
Q. And the uncle of the junior member of the firm?
A. Yes, sir.
Q. You are one of the parties in this chattel mortgage?
A. Yes, sir.
Q. How long have you known A. H. Vance?
A. I have known him since 1870.
Q. What relation, if any, are you to him?
A. We are no relation, except by marriage.
Q. He is a son-in-law of Mr. Wolfe's?
A. Yes, sir.
Q. Did you live in Topeka at any time?
A. I did.
Q. How long and when?
A. From 1869 until 1889.

Q. Did you ever give Mr. Vance any authority at all to represent you in these matters—in the indebtedness on which you were surety?

A. No, sir.
Q. None whatever?

A. I did not. We had some talks about the indebtedness caused by the frequent requests for renewals, but I was absent at the time when the chattel mortgage was given.

Q. You accepted the chattle mortgage all right?
A. I did.

Q. The firm of W. F. Wolfe & Son did not owe you anything at the time they gave this chattel mortgage and made you one of the mortgagees; I mean you individually?

A. I don't remember whether they did or not. They may have owed me something, but I have no recollection of it.

700 Q. You did not include anything in the mortgage?
A. No, sir.

Q. You say, Mr. Harvey, you had no knowledge that the firm or either member of the firm of W. F. Wolfe & Son being insolvent. I will ask you if you did not know of the fact of a firm composed of William L. Wolfe and some of his brothers failing in Cincinnati for a large amount and of his being insolvent at that time.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Q. Mr. Harvey, you was security on a number of notes of W. F. Wolfe & Son and W. F. Wolfe & Sons?

A. That was what I said; yes, sir.

Q. Have you ever paid any of those notes or has there ever been any legal proceedings to enforce the payment of those notes against you?

A. I have never paid any of them that I was security on, and I have no knowledge of any legal proceedings.

Q. I will ask you, Mr. Harvey, if a firm of which William F. Wolfe was a member did not fail in Cincinnati.

Objected to as incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which defendant excepted.

Plaintiff rests in rebuttal.

Testimony of Louis E. Pitts.

LOUIS E. PITTS, being recalled by defendant in surrebuttal, testified as follows:

Direct examination by Mr. HORNOR:

Q. I now hand you a book, and will ask you to state what it is, Mr. Pitts.

A. Judgment Record Number One, in which all the final judgments of this court are recorded or entered.

Defendant here offers in evidence the journal entry in the case of Frankenthal & Bro. *vs.* W. F. Wolfe & Son, on page 185 of
701 the book identified by the witness.

Objected to as incompetent, irrelevant, immaterial, not within the issues in this case, and the parties are not shown to have any interest herein or to be represented herein; which objection was by the court overruled; to which plaintiff excepted.

Defendant now offers in evidence the journal entry in the case of Rice, Stix & Co. against W. F. Wolfe & Son, found on page 186 of the book identified by the witness.

Same objection as last above; same ruling and exception.

Defendant offers in evidence the journal entry in the case of John V. Farwell Co. *vs.* W. F. Wolfe & Son, found on page 187 of the record identified by the witness.

Same objection, ruling, and exception as last above.

Defendant now offers in evidence the journal entry found on page 189 of said book in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son.

Same objection, ruling, and exception as last above.

Defendant here reoffers the final judgment in the case of Burnham, Hanna, Munger & Co. *vs.* W. F. Wolfe & Son, found on page 435, Journal Number 3.

Objected to because rendered long subsequent to the taking of the goods charged in this action, incompetent, irrelevant, and im-

material, and not within the issues in this case; which objection was by the court overruled; to which plaintiff excepted.

Q. Mr. Pitts, please produce the trial docket of this term of the district court.

A. I have it.

Defendant here offers in evidence the record found on the record identified by the witness relating to case # 361, entitled M. D. Wells & Co. *vs.* W. F. Wolfe & Son, for the purpose of showing that the case is pending here. The same offer is made with reference to cases numbered 362, 367, 368, 402.

Objected to as incompetent, irrelevant, and immaterial. Overruled. Exception.

Said exhibits are as follows, to wit:

702 The following is a copy of the foregoing trial docket entries:

No.	Name of parties.	Attorneys.	Cause of action.	Notes.
361	M. D. Wells & Co. *vs.* W. F. Wolfe & Son.	Keaton & Cotteral, Wisby & Horner, H. S. Cunningham.	Attachment.	Pending on motion; continued for term; set for trial 2, 19, '95; hearing on motion Feb'y 19, 1:30 p. m.
362	Rice, Stix & Co. *vs.* W. F. Wolfe & Son.	Keaton & Cotteral and Wisby & Horner, H. S. Cunningham and S. L. Overstreet.	Attachment.	Cont. for term; set for trial 2, 19, '95.
367	Alex. Frankenthal & Bro. *vs.* W. F. Wolfe & Son.	Keaton & Cotteral and Wisby & Horner, H. S. Cunningham and S. L. Overstreet.	Attachment.	Cont. for term; set for trial 2, 19, '95.
368	Sweet, Dempster & Co. *vs.* W. F. Wolfe & Son.	Keaton & Cotteral and Wisby & Horner, H. S. Cunningham.	Attachment.	Cont. for term; set for trial 2, 19, '95.
402	John V. Farwell & Co. *vs.* W. F. Wolfe & Son.	Wisby & Horner and Keaton & Cotteral, H. S. Cunningham.	Attachment.	Cont. for term; set for trial 2, 19, '95.

703 In the District Court of Logan County, Oklahoma Territory.

ALEX. FRANKENTHAL & BRO., Plaintiffs,
vs.
W. F. WOLFE & SON, Defendants. } Journal Entry.

Now, on this 12th day of January, 1895, the time specially set for the hearing of the motions for a new trial and to relieve plaintiff from the judgment rendered in this cause on the written agreement of the parties on the 5th day of February, 1892, this cause comes on for hearing regularly upon said motions, and the court, after hearing said motions and the affidavits presented in support thereof and being duly advised in the premises, sustains said motions; to which ruling of the court the defendants excepted.

It is therefore by the court considered, ordered, and adjudged that the said motions for a new trial and to relieve the plaintiff from the judgment rendered in this cause on the written agreement of the parties on the 5th day of February, 1892, be sustained, and that the said judgment be set aside and a new trial granted in this cause.

Approved:

E. B. GREEN, *Judge.*

704 In the District Court of Logan County, Oklahoma Territory.

RICE, STIX & Co., Plaintiffs,
vs.
W. F. WOLFE & SON, Defendants. } Journal Entry.

Now, on this 12th day of January, 1893, the time specially set for the hearing of the motions for a new trial and to relieve plaintiff from the judgment rendered in this cause on the written agreement of the parties on the 5th day of February, 1892, this cause comes on for hearing regularly upon said motions, and the court, after hearing said motions and the affidavits presented in support thereof and being duly advised in the premises, sustains said motions; to which ruling of the court the defendants excepted.

It is therefore by the court considered, ordered, and adjudged that the said motions for a new trial and to relieve the plaintiff from the judgment rendered in this cause on the written agreement of the parties on the 5th day of February, 1892, be sustained, and that the said judgment be set aside and a new trial granted in this cause.

Approved:

E. B. GREEN, *Judge.*

705 In the District Court of Logan County, Oklahoma Territory.

JOHN V. FARWELL Co, Plaintiffs,
vs.
W. F. WOLFE & SON, Defendants. } Journal Entry.

Now, on this 12th day of January, 1893, the time specially set for the hearing of the motions for a new trial and to relieve plaintiff from the judgment rendered in this cause on the written agreement of the parties on the 5th day of February, 1892, this cause comes on for hearing regularly upon said motions, and the court, after hearing said motions and the affidavits presented in support thereof, and being duly advised in the premises, sustains said motions; to which ruling of the court the defendants excepted.

It is therefore by the court considered, ordered, and adjudged that the said motions for a new trial and to relieve the plaintiff from the judgment rendered in this cause on the written agreement of the parties on the 5th day of February, 1892, be sustained, and

that the said judgment be set aside and a new trial granted in this cause.

Approved:

E. B. GREEN, *Judge.*

706 In the District Court of Logan County, Oklahoma Territory.

M. D. WELLS & Co., Plaintiffs,
vs.
W. F. WOLFE & SON, Defendants. } Journal Entry.

Now, on this 12th day of January, 1893, the time specially set for the hearing of the motions for a new trial, and to relieve plaintiff- from the judgment rendered in this cause on the written agreement of the parties on the 5th day of February, 1892, this cause comes on for hearing regularly upon said motions, and the court, after hearing said motions and the affidavits presented in support thereof and being duly advised in the premises, sustains said motions; to which ruling of the court the defendants excepted.

It is therefore by the court considered, ordered, and adjudged that the said motions for a new trial and to relieve the plaintiff- from the judgment rendered in this cause on the written agreement of the parties on the 5th day of February, 1892, be sustained, and that the said judgment be set aside and a new trial granted in this cause.

Approved:

E. B. GREEN, *Judge.*

707 In the District Court of Logan County, Oklahoma Territory, — Judicial Day, February —, 1892.

JAMES K. BURNHAM, THOMAS K. HANNA, ALBERT H. Munger, Frederick C. Stoepel, Rice R. Miner, and Oscar L. Woodgate, Partners, Doing Business under the Firm Name and Style of Burnham, Hanna, Munger & Company, Plaintiff-,
vs.
WILLIAM F. WOLFE and LEWIS H. WOLFE, Partners, Doing Business under the Firm Name and Style of Wm. F. Wolfe & Son, Defendants. } Journal Entry.

Come now the parties, the plaintiffs, by S. L. Overstreet, *its* attorney, and the defendants by Harper S. Cunningham, their attorney, and by leave of court the plaintiffs filed an amended affidavit in attachment and an amended complaint and withdraws from the files *its* original affidavit and complaint; whereupon the defendants, by leave of court, withdraw their answer to plaintiffs' complaint heretofore filed, and also their answer and plea in abatement to the attachment proceedings herein.

Whereupon plaintiffs move the court that the defendants be ruled to answer *its* amended complaint and the attachment proceedings

herein. Thereupon the court rules the said defendants and each of them to answer plaintiffs' amended complaint and amended affidavit in attachment herein, or to otherwise plead thereto instanter, which defendants decline and refuse to do, but agree in open court that judgment may be rendered as prayed in plaintiffs' amended complaint, and that the attachment proceedings may be submitted to the court upon the pleadings and amended affidavit in attachment, which is accordingly done; and the court, being fully
708 advised in the premises, finds that the attachment proceedings herein ought to be sustained, and that the plaintiff ought to recover of and from the defendants and each of them the sum of fifty-one hundred and ninety-one dollars ($5,191.00) as alleged and set forth in plaintiffs' amended affidavit in attachment and amended complaint herein. It is therefore considered, ordered, and adjudged by the court that the plaintiffs, Burnham, Hanna, Munger & Co., do have and recover of and from the defendants, William F. Wolfe and Lewis H. Wolfe, partners, doing business under the firm name and style of W. F. Wolfe & Son, and each of them, the sum of $5,191.00 and the costs of this action herein, taxed at — dollars, and that the attachment proceedings herein be, and the same are hereby, sustained.

It is further considered and ordered by the court that the cost of this action and said judgment of five thousand one hundred and ninety one dollars and accruing interest thereon be paid in full by the clerk of this court from the funds paid into court arising from the proceeds of the sale of the stock of merchandise attached in this action at Oklahoma city, in said Territory, and heretofore sold under the order of court, and the stock of merchandise at Guthrie, Oklahoma Territory, upon which the order of attachment was levied in this action, said sale having been heretofore made by order of court in the case of E. S. Jaffray & Company *et al. vs.* W. F. Wolfe & Son.

E. B. GREEN, *Judge.*

Filed Feb. 10, 1892.

T. G. RISLEY,
Clerk Dist. Court.

709 *Testimony of Edgar W. Jones.*

EDGAR W. JONES, being called as a witness for defendant in surrebuttal and being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination by Mr. COTTERAL:

Q. What official position, if any, do you hold in this Territory?
A. Clerk of the supreme court and librarian of the Territory.
Q. How long have you been clerk of the supreme court?
A. Since the 7th of October, 1893.
Q. As clerk of the supreme court, state whether there is a case there pending at this time, namely, E. S. Jaffray & Co. *vs.* W. F. Wolfe & Son.

A. There is a case, number 63; Jaffray & Co. are plaintiffs and Wolfe & Son are defendants in error. The case has been submitted, and at first the judgment of the lower court was affirmed. A motion for review was filed and considered and the case was assigned for reconsideration at the present time.

Q. The case is, then, still pending in the supreme court?

A. The case is now pending; it has been assigned to one of the justices for decision.

Cross-examination by Mr. CUNNINGHAM:

Q. The judgment of the supreme court affirming the judgment of the lower court has not yet been set aside?

A. No, sir; an opinion was written by the chief justice affirming the judgment of the court below, and a motion for reconsideration was filed and is now pending, and the case is now pending for reconsideration.

Defendant rests in surrebuttal.

Testimony of Louis E. Pitts.

LOUIS E. PITTS being recalled for plaintiff.

By Mr. CUNNINGHAM: Have you the record of the judgment in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son, rendered upon the stipulation?

A. I have it. Here it is, Mr. Cunningham.

710 Counsel for plaintiff here offers in evidence the judgment rendered in the case of M. D. Wells & Co. *vs.* W. F. Wolfe & Son upon the stipulation.

Objected to as incompetent, irrelevant, immaterial, and not proper surrebuttal and not within the issues in this case; which objection was by the court overruled; to which defendant excepted.

Plaintiff here offers the same judgment in each of the cases mentioned by the clerk, found in the journal of this court, Book No.—, at page —.

Objected to as last above. Overruled. Exception.

Plaintiff now offers in evidence the motion in the case of M. D. Wells & Co., now on file in this court, to set aside the order granting the plaintiffs a new trial in the suit of M. D. Wells & Co. *vs.* W. F. Wolfe & Son.

Objected to as incompetent, irrelevant, and immaterial, and not within the issues in the case, and improper surrebuttal; which objection was by the court overruled; to which defendant excepted.

Plaintiff now offers the same motion in each of the other cases *case* referred to.

Objected to as last above. Overruled. Exception.

The said motions to set aside the order granting a new trial were offered merely, but neither of said motions *were* produced and given in evidence.

The said judgments in the cases referred to are in the following words and figures:

711 TERRITORY OF OKLAHOMA, }
County of Logan. }

In the District Court.

MOSES D. WELLS, HENRY J. MCFARLAND, and Brenton R. Wells, Partners as M. D. Wells & Co., Plaintiffs,
vs.
W. F. WOLFE and LEWIS H. WOLFE, Partners as W. F. Wolfe & Son, Defendants. } Journal Entry.

Comes now, on this 5 day of Feb'y, 1892, the above-named defendant- and moves the court for judgment in the above cause dismissing the attachment proceedings heretofore in this case instituted, upon the written agreement made and entered into between the attorneys of record in said cause; which agreement is in the words and figures as follows, to wit:

The agreement made by and between Bierer and Cotteral and Cunningham and Wisby, attorneys of record for E. S. Jaffrays & Co. and other attaching creditors against Wolfe and Son, and Harper S. Cunningham, attorney of record for W. F. Wolfe & Son, made on this the 21st day of November, 1891, is as follows:

That all the attachment suits brought by Bierer and Cotteral and Cunningham and Wisby for their clients against W. F. Wolfe and Son shall abide by and be governed by the judgment of the court in the case, now on trial, of E. S. Jaffrays & Co. *vs.* W. F. Wolfe and Son, and that the same judgment in the attachment proceedings may and shall be entered in all cases of which they are attorneys now pending in the district court of Logan county, Ok. Ty., that is made and entered in the case of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son, now on trial of the attachment.

The agreement is that if the attachment is sustained in the case, now on trial, of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son, it shall be sustained in all the cases in which Bierer & Cotteral and Cunningham & Wisby are of counsel; and if the attachment is
712 dissolved in the case of the said E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son, it shall be dissolved in all the cases of which said Bierer and Cotteral & Cunningham and Wisby are of counsel. Either party has the right to appeal from any or all of said judgments to the supreme court of this Territory or to the Supreme Court of the United States or to any other court having appellate jurisdiction. It is further agreed that the record and evidence in the case of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son shall be the record and evidence in all the other cases if they should be appealed, so far as applicable.

BIERER & COTTERAL,
CUNNINGHAM & WISBY,
For Their Attachment Plaintiffs.
HARPER S. CUNNINGHAM,
Attorney for W. F. Wolfe & Son, Def't.

And the court, having heard the evidence and argument of counsel, find:

That said agreement was duly entered into by said attorneys of record, and that the judgment in the attachment proceedings of E. S. Jaffrays and Company had been duly rendering discharging the attachment in said cause; the court doth further find that under the terms of said agreement and by virtue thereof that judgment should be rendered in this case discharging said attachment.

It is therefore considered, ordered, and adjudged that the attachment in this case be, and the same is hereby, dissolved and discharged, and that the costs of the proceeding in attachment, taxed at — dollars, be paid by the plaintiff herein, and hereof let execution issue; to which ruling and judgment and to each and every finding therein the defendants, by their attorneys, at the time then and there duly excepted, and upon application were by the court allowed sixty days in which to file a bill of exceptions.

E. B. GREEN, *Judge.*

713 TERRITORY OF OKLAHOMA, }
County of Logan. }

In the District Court.

ALEXANDER FRANKENTHAL and ALBERT FRANKenthal, Partners as A. Frankenthal and Brother, Plaintiffs,
vs.
W. F. WOLFE and LEWIS H. WOLFE, Partners as W. F. Wolfe & Son, Defendants. } Journal Entry.

Comes now, on this 5th day of Feb'y, 1892, the above-named defendant- and moves the court for judgment in the above cause dismissing the attachment proceedings heretofore in this case instituted upon the written agreement made and entered into between the attorneys of record in said cause; which agreement is in the words and figures as follows, to wit:

The agreement made by and between Bierer and Cotteral and Cunningham and Wisby, attorneys of record for E. S. Jaffrays & Co. and other attaching creditors against Wolfe and Son, and Harper S. Cunningham, attorney of record for W. F. Wolfe & Son, made on this the 21st day of November, 1891, is as follows:

That all the attachment suits brought by Bierer and Cotteral and Cunningham and Wisby, for their clients, against W. F. Wolfe and Son shall abide by and be governed by the judgment of the court in the case now on trial of E. S. Jaffrays & Co. *vs.* W. F. Wolfe and Son, and that the same judgment in the attachment proceedings may and shall be entered in all cases of which they are attorneys, now pending in the district court of Logan county, Ok. Ty., that is made and entered in the case of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son now on trial of the attachment.

The agreement is that if the attachment is sustained in the case now on trial of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son, it shall

be sustained in all the cases in which Bierer & Cotteral and Cunningham & Wisby are of counsel, and if the attachment is
714 dissolved in the case of the said E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son, it shall be dissolved in all the cases of which said Bierer and Cotteral & Cunningham and Wisby are of counsel. Either party has the right to appeal from any or all of said judgments to the supreme court of this Territory or to the Supreme Court of the United States, or to any other court having appellate jurisdiction. It is further agreed that the record and evidence in the case of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son shall be the record and evidence in all the other cases, if they should be appealed, so far as applicable.

BIERER & COTTERAL,
CUNNINGHAM & WISBY,
For Their Attachment Plaintiffs.
HARPER S. CUNNINGHAM,
Attorney for W. F. Wolfe & Son, Def't.

And the court, having heard the evidence and argument of counsel, finds—

That said agreement was duly entered into by said attorneys of record, and that the judgment in the attachment proceedings of E. S. Jaffrays and Company had been duly rendered discharging the attachment in said cause. The court doth further find that under the terms of said agreement and by virtue thereof that judgment should be rendered in this case discharging said attachment.

It is therefore considered, ordered, and adjudged that the attachment in this case be, and the same is hereby, dissolved and discharged, and that the costs of the proceeding in attachment, taxed at — dollars, be paid by the plaintiff herein, and hereof let execution issue; to which ruling and judgment and to each and every finding therein the defendants, by their attorneys, at the time then and there duly excepted, and, upon application, were by the court allowed sixty days in which to file a bill of exceptions.

E. B. GREEN, *Judge.*

715 TERRITORY OF OKLAHOMA, }
County of Logan. }

In the District Court.

HENRY RICE, JOHNATHAN RICE, WILLIAM STIX, David and Benjamin Eiserman, and Elias Michaels, Partners as Rice, Stic & Co., Plaintiffs,
vs.
W. F. WOLFE and LEWIS H. WOLFE, Partners as W. F. Wolfe & Son, Defendants.
} Journal Entry.

Comes now, on this 5 day of Feb'y, 1892, the above-named defendants and moves the court for judgment in the above cause dismissing the attachment proceedings heretofore in this case insti-

tuted upon the written agreement made and entered into between the attorneys of record in said cause; which agreement is in the words and figures as follows, to wit:

The agreement made by and between Bierer and Cotteral and Cunningham and Wisby, attorneys of record for E. S. Jaffrays & Co. and other attaching creditors against Wolfe and Son, and Harper S. Cunningham, attorney of record for W. F. Wolfe & Son, made on this the 21st day of November, 1891, is as follows:

That all the attachment suits brought by Bierer and Cotteral and Cunningham and Wisby for their clients against W. F. Wolfe and Son shall abide by and be governed by the judgment of the court in the case now on trial of E. S. Jaffrays and Co. *vs.* W. F. Wolfe and Son, and that the same judgment in the attachment proceedings may and shall be entered in all cases of which they are attorneys now pending in the district court of Logan county, Ok. Ty., that is made and entered in the case of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son, now on trial of the attachment.

716 The agreement is that, if the attachment is sustained in the case, now on trial, of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son, it shall be sustained in all the cases in which Bierer & Cotteral and Cunningham & Wisby are of counsel, and if the attachment is dissolved in the case of the said E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son it shall be dissolved in all the cases of which said Bierer and Cotteral & Cunningham and Wisby are of counsel. Either party has the right to appeal from any or all of said judgments to the supreme court of this Territory or to the Supreme Court of the United States or to any other court having appellate jurisdiction. It is further agreed that the record and evidence in the case of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son shall be the record and evidence in all the other cases, if they should be appealed, so far as applicable.

BIERER & COTTERAL,
CUNNINGHAM AND WISBY,
For Their Attachment Plaintiffs.
HARPER S. CUNNINGHAM,
Attorney for W. F. Wolfe & Son, Def't.

And the court, having heard the evidence and argument of counsel, finds—

That said agreement was duly entered into by said attorneys of record, and that the judgment in the attachment proceedings of E. S. Jaffrays and Company had been duly rendered discharging the attachment in said cause. The court doth further find that under the terms of said agreement and by virtue thereof that judgment should be rendered in this case discharging said attachment.

It is therefore considered, ordered, and adjudged that the attachment in this case be, and the same is hereby, dissolved and discharged, and that the costs of the proceeding in attachment, taxed at — dollars, be paid by the plaintiff herein, and hereof let execution issue; to which ruling and judgment and to each and every finding therein the defendants, by their attorneys, at the time then

and there duly excepted, and, upon application, were by the court allowed sixty days in which to file a bill of exceptions.

E. B. GREEN, *Judge.*

717 TERRITORY OF OKLAHOMA, }
County of Logan. }

In the District Court.

JOHN V. FARWELL, CHARLES B. FARWELL, JOHN K. Harman, John T. Chumasero, and John V. Farwell, Jr., Partners as John V. Farwell Co., Plaintiffs,
vs.
W. F. WOLFE and LEWIS H. WOLFE, Partners as W. F. Wolfe & Son, Defendants. } Journal Entry.

Comes now, on this 5 day of Feb'y, 1892, the above-named defendant- and moves the court for judgment in the above cause dismissing the attachment proceedings heretofore in this case instituted upon the written agreement made and entered into between the attorneys of record in said cause; which agreement is in the words and figures as follows, to wit:

The agreement made by and between Bierer and Cotteral and Cunningham and Wisby, attorneys of record for E. S. Jaffrays & Co. and other attaching creditors against Wolfe and Son, and Harper S. Cunningham, attorney of record for W. F. Wolfe & Son, made on this the 21st day of November, 1891, is as follows:

That all the attachment suits brought by Bierer and Cotteral and Cunningham and Wisby for their clients against W. F. Wolfe and Son shall abide by and be governed by the judgment of the court in the case now on trial of E. S. Jaffrays and Co. *vs.* W. F. Wolfe and Son, and that the same judgment in the attachment proceedings may and shall be entered in all cases of which they are attorneys now pending in the district court of Logan county, Ok. Ty., that is made and entered in the case of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son, now on trial of the attachment.

718 The agreement is that, if the attachment is sustained in the case, now on trial, of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son, it shall be sustained in all the cases in which Bierer & Cotteral and Cunningham & Wisby are of counsel, and if the attachment is dissolved in the case of the said E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son it shall be dissolved in all the cases of which said Bierer and Cotteral & Cunningham and Wisby are of counsel. Either party has the right to appeal from any or all of said judgments to the supreme court of this Territory or to the Supreme Court of the United States or to any other court having appellate jurisdiction. It is further agreed that the record and evidence in the case of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son shall be the

record and evidence in all the other cases if they should be appealed, so far as applicable.

BIERER & COTTERAL,
CUNNINGHAM AND WISBY
For Their Attachment Plaintiffs.
HARPER S. CUNNINGHAM,
Attorney for W. F. Wolfe & Son, Def't.

And the court, having heard the evidence and argument of counsel, finds:

That said agreement was duly entered into by said attorneys of record, and that the judgment in the attachment proceedings of E. S. Jaffrays and Company had been duly rendered discharging the attachment in said cause. The court doth further find that under the terms of said agreement and by virtue thereof that judgment should be rendered in this case discharging said attachment.

It is therefore considered, ordered, and adjudged that the attachment in this case be, and the same is hereby, dissolved and discharged, and that the costs of the proceeding in attachment, taxed at — dollars, be paid by the plaintiff- herein, and hereof let execution issue; to which ruling and judgment and to each and every finding therein the defendants, by their attorneys, at the time then and there duly excepted, and, upon application, were by the court allowed sixty days in which to file a bill of exceptions.

E. B. GREEN, *Judge.*

719 *Testimony of H. S. Cunningham.*

H. S. CUNNINGHAM recalled for plaintiffs.

Examination by Mr. ELLIS:

Q. Mr. Cunningham, you have read the orders offered in evidence by the defendant in this case in each of these several cases of M. D. Wells & Co. *vs.* W. F. Wolfe & Son, Frankenthal & Bro. *vs.* W. F. Wolfe & Son, Rice, Stix & Co. *vs.* W. F. Wolfe & Son, John V. Farwell Co. *vs.* W. F. Wolfe & Son, and other plaintiffs against W. F. Wolfe & Son as they were offered here a few moments ago?

A. Yes, sir; I have; I am familiar with them.

Q. I want you to state to the court the circumstances under which those orders were made in this court and where you were at the time.

Objected to as incompetent, irrelevant and immaterial, and improper surrebuttal and not proper evidence; which objection was by the court sustained; to which plaintiff- excepted.

Q. Now, Mr. Cunningham, were you present when those orders were made?

Objected to as last above; which objection was by the court sustained; to which plaintiff- excepted.

Q. Mr. Cunningham, were those orders made after you had been excused from court?

Same objection, ruling, and exception as last above.

Q. Where were you when those orders were made?

Same objection, ruling, and exception as last above.

Q. When did you first find out that any such orders had been made in these cases?

Same objection, ruling, and exception.

Case closed.

720 EXHIBIT SIX.

This agreement, made by and between Bierer and Cotteral and Cunningham and Wisby, attorneys of record for E. S. Jaffray & Co. and other attaching creditors against Wolfe and Son, and Harper S. Cunningham, attorney of record for W. F. Wolfe & Son, made on this the 21st day of November, 1891, is as follows:

That all the attachment suits brought by Bierer and Cotteral and Cunningham and Wisby for their clients against W. F. Wolfe and Son shall abide by and be governed by the judgment of the court in the case now on trial of E. S. Jaffray & Co. *vs.* W. F. Wolfe and Son, and that the same judgment in the attachment proceedings may and shall be entered in all cases of which they are attorneys, now pending in the district court of Logan county, Ok. Ty., that is made and entered in the case of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son, now on trial of the attachment.

The agreement is that, if the attachment is sustained in the case, now on trial, of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son, it shall be sustained in all the cases in which Bierer & Cotteral and Cunningham & Wisby are of counsel, and if the attachment is dissolved in the case of the said E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son it shall be dissolved in all the cases of which said Bierer and Cotteral & Cunningham and Wisby are of counsel. Either party has the right to appeal from any or all of said judgments to the supreme court of this Territory or to the Supreme Court of the United States or to any other court having appellate jurisdiction. It is further agreed that the record and evidence in the case of E. S. Jaffrays & Co. *vs.* W. F. Wolfe & Son shall be the record and evidence in all the other cases if they should be appealed, so far as applicable.

BIERER & COTTERAL,
CUNNINGHAM & WISBY,
For Their Attachment Plaintiffs.
HARPER S. CUNNINGHAM,
Attorney for W. F. Wolfe & Son, Def't.

721 And the above and foregoing was all of the evidence introduced or offered on the trial of the said cause and is all of the evidence submitted therein.

722 And thereupon the court instructed the jury; and said instructions to the jury are in words and figures following, to wit:

723 In the District Court of Logan County, Oklahoma Territory, February Term, 1895.

HENRY W. KING & CO, THE BANK OF TOPEKA, Central National Bank of Topeka, Tootle, Wheeler & Motter, and A. H. Vance, Plaintiffs,
vs.
C. H. DE FORD, Defendant.
} Instructions Given.

First.

GENTLEMEN OF THE JURY: In this case the plaintiffs claim that in the month of December, 1890, the firm of W. F. Wolfe & Son, composed of W. F. Wolfe and Louis H. Wolfe, were largely indebted to them, separately, which indebtedness was evidenced by various promissory notes which have been introduced in evidence, and that in order to secure said indebtedness the said firm of W. F. Wolfe & Son on the 15th day of December, 1890, executed a chattel mortgage upon a stock of merchandise located in Oklahoma city, this Territory, which chattel mortgage has been introduced in evidence; that by the terms of said mortgage and in accordance therewith these plaintiffs were put in possession of said property; that afterwards the defendant, C. H. De Ford, wrongfully took possession of said property from these plaintiffs and their agents and converted it to his own use or the use of others, and that therefore they are entitled to a judgment against said defendant for the value of their interest in said property and their possession of the same.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

724 2. The defendant admits that he took possession of the property claimed by plaintiffs, but by way of defense claims that he was sheriff of Oklahoma county, in this Territory, and was acting as such officer under process issued out of this court in two cases, in one of which M. D. Wells & Co. were plaintiffs and W. F. Wolfe & Son were defendants, and the other in which Burnham, Hanna, Munger & Co. were plaintiffs and W. F. Wolfe & Son defendants; that the property so taken under the process of the court was not the property of plaintiffs, and that they had no right to the possession thereof, for the reason that the mortgage under which they claimed was invalid, for the reason that the firm of W. F. Wolfe & Son at the time they executed said mortgage were indebted to said M. D. Wells & Co. and Burnham, Hanna, Munger & Co., and a large number of other wholesale creditors, for goods fraudulently procured from them, of which said plaintiffs had knowledge at the time of the execution and receipt of said mortgage, and for

the further reason that at the time the plaintiffs took said mortgage their indebtedness against Wolfe & Son was amply secured; that the same was not taken in good faith, but to aid said Wolfe & Son to cheat and defraud their said other creditors and to hinder and delay them in the collection of their claims; that the real object in the taking of said mortgage was for the purpose of securing D. A. Harvey, A. H. Vance, and J. T. Clark, near relatives to the members of the firm of W. F. Wolfe & Son, on account of their having signed the notes of Wolfe & Son, and not in good faith, to secure the indebtedness of the Wolfes to these plaintiffs.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

725 3. The burden of proof is upon the plaintiffs to show:

1st. That the chattel mortgage was executed to them to secure a *bona fide* indebtedness existing at the date of the execution of said mortgage and owing from Wolfe & Son to said plaintiffs; and

2nd. To further show that at the time the attachments of defendants were levied upon the stock of goods said plaintiffs, in person or by agent, were in the actual possession of said goods, or that the chattel mortgage was on file in the office of the register of deeds of Oklahoma county; and

3rd. To also show that the goods seized upon under the attachment writs were the identical goods described in the mortgage of plaintiffs.

If the plaintiffs shall have established these facts, then, in order to defeat their recovery, the burden of proof shifts to the defendant to show:

1st. That said Wolfe & Son were guilty of fraud in contracting the debts, to satisfy which writs of attachment were levied; and

2nd. To further show that the plaintiffs were parties to such fraud; and if the defendants shall fail to so establish either of these propositions you must return a verdict for plaintiffs.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury retired, duly excepted and except.

726 4. The jury is instructed that although the chattel mortgage in this case is made to several parties who are named therein as mortgagees, still in law such mortgage should be construed as though separate and distinct mortgages for the several amounts and to the several mortgagees had been made and executed at the same time. It follows, therefore, that in order to defeat the claim of any one of such mortgagees under such mortgage, the defendant herein must show not only a fraudulent intent in the giving thereof on the part of W. F. Wolfe & Son to cheat and defraud their insecured creditors, but as to such particular mortgagee the defendant must also show that he, they, or it received said mortgage for the

purpose and with the intent of aiding and assisting said W. F. Wolfe and Son in carrying out such fraudulent intent.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

727 5. The jury are instructed that if they should believe from the evidence that for a number of years William F. Wolfe and Louis H. Wolfe were in copartnership under the firm name of William F. Wolfe & Son, and if at any time Fred W. Wolfe was admitted as a member of the said firm to the extent of having an interest in the profits, if any thereof, and if afterwards and without any formal notice of dissolution the said Fred W. Wolfe did retire from said firm, and thereafter the said firm resumed their business as William F. Wolfe and Son, or if some of the notes after such retirement were signed as William F. Wolfe and Son, still the debts contracted by said firm while so doing business either as William F. Wolfe & Son or William F. Wolfe & Sons would be firm liabilities of the firm of William F. Wolfe & Son, and as such they would have the right and it would be the duty of said firm of William F. Wolfe and Son to pay the debts irrespective of the question as to whether the notes or obligations outstanding, if any, were given in the name of William F. Wolfe and Sons or William F. Wolfe & Son.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

728 6. You are instructed that a man has a perfect right to deal with his relatives and friends—to buy, sell, or mortgage from or to them—and the presumption of law is that the dealings between such parties are fair and honest, without any fraudulent intent, and no presumption of fraud attaches to such dealings, and if a man finds himself in failing circumstances he has the right to prefer one creditor to another and so dispose of his property that one or more creditors shall receive pay in full and others receive nothing, and the mere fact that the parties secured may be friends or relatives is immaterial.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

729 7. You are instructed that if you find from the evidence that Wolfe & Son were indebted to the plaintiffs in this action in the sums named in the chattel mortgage, then such mortgage was given for an adequate consideration and is valid as between the parties to such mortgage and as against all attaching creditors, unless you find that such mortgage was executed for the purpose and with the fraudulent intent to hinder and delay creditors.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and

hearing of the jury and before the jury had retired, duly excepted and except.

8. In order to invalidate the chattel mortgage it is not enough for the defendant to show simply that the firm of W. F. Wolfe & Son fraudulently purchased goods of the attaching creditors, but it must also appear from the evidence that the plaintiffs in this case were parties to such fraud; that they were either active participants in such fraud, or that they aided and abetted in such fraud, or that said plaintiffs at the time they took such mortgage actually knew that Wolfe & Son had fraudulently incurred a liability and debt for the goods or a portion thereof described in the chattel mortgage.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence of the jury and before the jury had retired, duly excepted and except.

730 9. By aiding and abetting is meant such acts as are intentionally done which encourage or assist to such extent as will in some manner bring about a given result, and unless you find from the evidence that the plaintiffs, with the intent to defraud the attaching creditors, did some act to defraud such creditors or aided and abetted Wolfe & Son to so defraud (or had actual knowledge that the goods described in the mortgage had been by Wolfe & Son fraudulently obtained) you must return a verdict for the plaintiffs.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence of the jury and before the jury had retired, duly excepted and except.

10. You are instructed that a party, though in debt, may sell or mortgage his property to any one he pleases if it be for an honest and fair consideration and no lien exist to forbid it. If the transaction be an honest one, made in good faith and for an adequate consideration, it matters not how many creditors may be prevented thereby from reaching the property; and you are further instructed that although a sale or mortgage of a debtor's property may have the effect to hinder and delay his creditors in the collection of their debts, this fact alone will not render the sale fraudulent and void. A debtor, however insolvent, may lawfully sell or mortgage his property if it is done for the purpose of satisfying or discharging a legal liability.

To which said instruction and each and every part thereof the said plaintiffs and each of them duly excepted at the time, in the presence and hearing of the jury and before the jury had retired, and still except.

731 11. Fraud is any unlawful conduct operating prejudicial to creditors' rights and may consist in withdrawing from another that which is justly due him or depriving him of his rights by deception and artifice, or any unlawful act which by intention withdraws the property of the debtor from a creditor's reach and the purchase of goods with the intention of not paying for them or with a knowledge of insolvency to the extent that the purchaser should know that he will not thereafter be able to pay for them is

a fraud, and so misrepresentation as to solvency and the concealment of insolvency are frauds in fact upon the vendor.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence of the jury and before the jury had retired, duly excepted and except.

12. You are instructed that before a party can annul or treat a contract of sale as void, by reason of the alleged false or fraudulent representations used in inducing the party to sell the goods, it must appear from the evidence that the alleged false or fraudulent representations were made regarding something which had already transpired or was then alleged to exist. No statement of one's opinions as to what will or will not happen or exist in the future can affect a contract of sale or render it void. Every person in making a contract is at liberty to speculate or express opinions as to future events, and he cannot be held to answer for their truth or falsity.

To which instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

732 13. You are instructed that any wilful misrepresentation o .a material fact, made with a design to deceive another and to induce him to enter into a trade he would not otherwise make, will enable the party who has been defrauded to annul the contract, and it makes no difference whether the party making the misrepresentations knew them to be false or whether he was ignorant of the fact stated, provided the matter stated was material and the party making the statements stated them as true, when in fact he had no apparently good reason for believing it to be true, and when the other party, under the circumstances shown by the evidence, was reasonably justified in relying upon the statements and did rely upon them in selling the goods and was deceived or injured thereby. Whether in this case William F. Wolfe & Son or either of them made the fraudulent and false representations alleged, and whether they were false, and, if so made, whether they were made for the fraudulent purpose alleged and were relied upon by the defendants in the sale of their goods, are questions exclusively for the jury, to be determined by the weight of the evidence in the case.

To which instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

733 14. You are instructed that fraud, in the absence of testimony, can never be presumed, but fraud may be established by the evidence, which shows a state of circumstances and conditions from which such fraud could be reasonably inferred; that, for the purpose of determining whether in fact fraud existed, the jury should take into consideration all of the facts and circumstances in proof in the case, together with all of the evidence of the different witnesses, and if, after a careful consideration of such facts and circumstances and evidence, you affirmatively find the existence of

fraud, then under the law you would be justified in finding such fact established by the proof.

To which instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

15. A husband or son may in good faith make a gift to his wife or mother when he is not owing anything, and may at any time make a gift to her of exempt property when he does so in good faith, but a transfer of property to a wife or mother or daughter to preserve it from execution is fraudulent.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence of the jury and in the hearing of the jury and before said jury had retired, duly excepted and except.

734 16. You are instructed that under the law a party who transacts business through an agent is bound by the acts of such agent, if done within the scope of the authority of the agency, and the acts of the agent are the acts of the principal, and you are further instructed that where an agent acts beyond the scope of his authority and his acts are afterwards ratified by his principal, the acts of the agent become the acts of the principal and the principal is not permitted to claim and retain the benefits of the agent's acts in part and repudiate the same in part, and if he claims the benefits which accrue from the act, he must likewise assume the burdens and responsibilities which are attendant thereon, and you are instructed that a debtor cannot, under a mere pretence of securing a debt, convey more property than is reasonably necessary for that purpose, if such debtor is in insolvent circumstances, and if the debtor does such act with the intent to secure to himself a portion of the property and baffle his creditors, and if the evidence shows that W. F. Wolfe & Son undertook, in giving the chattel mortgage, to secure an indebtedness which did not exist in fact (or if the evidence shows that at the time such mortgage was given the agent who took the mortgage (if such agency existed) knew that W. F. Wolfe & Son had fraudulently purchased the goods given to secure the indebtedness named in the mortgage), or if any of said mortgagees were parties to a fraudulent transaction of W. F. Wolfe & Son in the purchase of such goods, then the mortgage given in this case is invalid as to each of plaintiffs who participated in such fraud, and the jury should so find.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence of the jury and in the hearing of the jury and before the jury had retired, duly excepted and except.

735 17. In a case like this the grantee's relation with the grantor and his means of knowing the grantor's circumstances and all connection with him are matters to be considered by you for the purpose of determining whether or not a fraudulent intent existed, but the relationship will not invalidate the transfer unless you find that the mortgagees or their agent or representative

had knowledge of or should have known the mortgagor's intent to defraud his creditors.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

18. You are the exclusive judges of the credibility of the witnesses and the facts proven in the case. For the purpose of determining the weight to be given to the testimony of a witness you should take into consideration his interest, if any, in the result of the suit; his bias or prejudice, if any appear; the reasonableness of his statements; his conduct and demeanor while upon the witness stand; his opportunities for knowing and understanding the facts about which he testifies, and any and all other facts and circumstances in proof in the case are proper for you to consider in determining the weight to be given to the testimony of the several witnesses who have testified in this case; and if you believe that any witness has wilfully sworn falsely touching any material matter in issue in this case, you may disregard his entire testimony, except to the extent to which the same has been corroborated by other credible witnesses or by facts and circumstances in proof in the case.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

736 19. By the term burden of proof as used in these instructions is meant the greater weight of the testimony, and in determining upon which side of a given proposition the greater weight of the testimony is you are instructed that it does not necessarily follow that the greater weight of the testimony is upon the side of the greater number of witnesses to a particular fact or state of facts. The apparent consistency, fairness, congruity of the evidence, and the opportunities of the several witnesses for knowing or understanding the matters about which they testify, their conduct and demeanor while testifying, their interest or lack of interest, if any, in the result of the suit, the probability or improbability of the truth of their statements, in view of all the other evidence and facts and circumstances proved on the trial, should all be considered by you in determining upon which side is the weight or preponderance of the testimony; and you are further instructed that in determining what facts are proved in this case you may find any fact to be proved which you think may be rightfully and reasonably inferred from the evidence in the case, although there may be no direct testimony to such fact.

To which instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence of the jury and in the hearing of the jury and before said jury had retired, duly excepted and except.

737 20. Should you find for the plaintiffs, the amount of their recovery should be the reasonable market value of the goods wrongfully seized by the defendant. In determining what that

value is, you should take into consideration the testimony of the several witnesses who have testified concerning its value. Persons who have been engaged in the business of buying and selling stocks of goods of the character in question in this case are presumed to have a better knowledge as to their value than those who have not been engaged in such business, and the extent to which the several witnesses have been engaged in such business is proper for you to take into consideration in determining the weight you should give to their testimony; and the opportunities which the witnesses may have had of examining and knowing the actual amount and value of the stock of goods in question should also be taken into consideration by you in determining the extent of the damages which the plaintiffs have suffered by reason of the wrongful taking of the goods by the defendant, and any and all other facts and circumstances in proof in the case touching the reasonable market value of the goods in question are proper for you to consider in determining what said value actually was at the date when the same were taken possession of by the defendant.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

738 21. You are instructed that in this case you may find a general verdict in favor of all the plaintiffs or in favor of the defendant, or you may find a verdict in favor of any one or more of the plaintiffs against the defendant; but in no case can you find a verdict for the plaintiffs or any one of them exceeding in value the amount which you find to have been the value of the goods at the time they were taken from the possession of the plaintiff, or a verdict in a greater sum than ten thousand dollars and interest thereon from December 15th, 1890, at the rate of ten per cent. per annum.

If you should find for any one or more of the plaintiffs and against any of such plaintiffs, it will be your duty to find for such plaintiffs, as your verdict may be in favor of the sum which you find to be their interest in the property alleged to have been wrongfully taken.

In this case the plaintiffs Henry W. King & Co. allege the interest of said company in the stock of goods to be in the sum of $1,058.54, evidenced by two promissory notes of $654.27 each, dated April 11, 1890, with interest, at eight per cent. per annum, from date, less $250 received thereon September 3, 1890.

That Tootle, Wheeler & Motter, plaintiffs, allege their interest in said stock of goods to be in the sum of $6,600.00, as evidenced by three promissory notes, all of which are dated April 9, 1890, and each of which draw interest from date at the rate of nine per cent. per annum.

That the plaintiff The Central National Bank alleges its interest to be in the sum of $2,000, as evidenced by two promissory notes for $1,000 each, one of which was due January 14, 1891, and one of which was due December 8, 1890, both of which said notes bear interest at the rate of ten per cent. per annum from maturity.

739 That the plaintiff The Bank of Topeka alleges its interest to be in the sum of $10,100.00, as evidenced by notes described as follows, to wit: One note, due January 28, 1890, for $2,100; one note, due November 22, 1890, for $2,000; one note, due December 15, 1890, for $1,000; one note, due February 20, 1891, for $5,000; all of which said notes bear interest, at the rate of ten per cent. per annum, after maturity.

That the plaintiff A. H. Vance alleges his interest to be in the sum of $2,300, as evidenced by three certain promissory notes—one for $1,000, one for $600, and one for $300—which sums, together with the interest thereon, amount in the aggregate to the sum of $2,300.00.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

22. Subject to the foregoing instructions and regarding the form of your verdict, the court further instructs you as follows:

1. In case you find for all of the plaintiffs your verdict will be in the following form:

HENRY W. KING ET ALS., Plaintiffs,
vs.
CHARLES H. DE FORD ET AL., Defendants. } Verdict.

We, the jury, find in favor of the plaintiffs and against defendant Charles H. De Ford, and assess the damages of plaintiffs at the sum of $—.

—— ——, *Foreman.*

740 2. In case you find for defendant Charles H. De Ford as against one or more plaintiffs and in favor of the other plaintiff or plaintiffs as against defendant Charles H. De Ford, and that the indebtedness referred to in said chattel mortgage, as owing to the plaintiff or plaintiffs in whose favor you so find, is *bona fide*, unpaid, and greater in amount than the reasonable market value of the goods sued for, then your verdict will be in the following form:

HENRY W. KING & CO. ET AL., Plaintiffs,
vs.
CHARLES H. DE FORD ET AL., Defendants. } Verdict.

We, the jury, find in favor of the defendant Charles H. De Ford against plaintiff (here set out name of plaintiff or plaintiffs against whom you so find); and we further find in favor of plaintiff (here set out name of plaintiff or plaintiffs in whose favor you so find) and against defendant Charles H. De Ford, and assess said plaintiffs' damages in the sum of —.

—— ——, *Foreman.*

3. In case you find for defendant Charles H. De Ford as against one or more of plaintiffs and in favor of the other plaintiff or plaintiffs as against Charles H. De Ford, and that the indebtedness referred to in said chattel mortgage as owing to the plaintiff or plaintiffs in whose favor you so find is *bona fide*, unpaid, and less in amount than the reasonable market value of the goods sold for, then your verdict will be in the following form:

741 HENRY W. KING & CO. ET AL., Plaintiff, }
vs. } Verdict.
CHARLES H. DE FORD ET AL., Defendants. }

We, the jury, find in favor of defendant Charles H. De Ford as against plaintiff (here set out name of plaintiff or plaintiffs against whom you so find); and we further find in favor of plaintiff (here set out name of plaintiff or plaintiffs in whose favor you so find) and against defendant Charles H. De Ford, and we assess said plaintiffs' damages at the sum of $—, which sum of $— is composed of —, plaintiff — damages in the sum of $— (here set out name and damages of any or other plaintiff or plaintiffs, if any, in the same way).

—— ——, *Foreman.*

4. In case you find for the defendant Charles H. De Ford as against all of the plaintiffs, your verdict will be in the following form:

HENRY W. KING & CO. ET AL., Plaintiffs, }
vs. } Verdict.
CHARLES H. DE FORD ET AL., Defendants. }

We, the jury in the above-entitled cause, find in favor of the defendant Charles H. De Ford and against all of the plaintiffs.

—— ——, *Foreman.*

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and hearing of the jury and before the jury had retired, duly excepted and except.

742 23. You are instructed that should you find for the plaintiffs or either of them, in addition to the principal sum so found, you should compute the interest on such sum at the rate of seven per cent. per annum from the date when the stock of goods was taken possession of by defendant and add such interest sum to the principal sum and the two together should be your verdict; and you are further instructed that in computing the amount which the plaintiffs or either of them are entitled to recover, you cannot allow any interest on the notes after the date upon which the goods were taken possession of by the sheriff.

To which said instruction and each and every part thereof the said plaintiffs and each of them at the time, in the presence and

hearing of the jury and before the jury had retired, duly excepted and except.

743 And the above and foregoing were all of the instructions given or submitted by the court to the jury in said cause.

744 And thereafter and on the twenty-fifth day of March, A. D. 1895, the said jury returned into court their verdict in words and figures following, to wit:

"In the District Court of Logan County, Oklahoma Territory.

HENRY W. KING & CO. ET AL., Plaintiffs,
vs.
C. H. DE FORD ET AL., Defendants. } No. 651. Verdict.

We, the jury in the above-entitled cause, find in favor of the defendant Charles H. De Ford and against all of the plaintiffs.

FERMAN UPHAM, *Foreman.*"

"Endorsed: Verdict of jury. Filed March 25, 1895."

745 And thereafter and on the twenty-sixth day of March, A. D. 1895, the said plaintiffs filed their motion in said cause to set aside said verdict and grant the said plaintiffs a new trial; which said motion was in writing and is in words and figures following, to wit:

746 TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

In the District Court in and for said County, Sitting for the Trial of Causes Arising under the Laws of said Territory.

HENRY W. KING & COMPANY; TOOTLE, Wheeler & Motter, Substituted for Tootle, Hosea & Company; The Central National Bank, The Bank of Topeka, and A. H. Vance, Plaintiffs,

vs.

CHARLES H. DE FORD, SWEET, DEMPSTER & Company, Alexander Frankenthal *et al.*; John V. Farwell, Charles B. Farwell, John K. Hannon, John T. Chumasso, and John V. Farwell, Jr., Partners as John V. Farwell and Company; Moses D. Wells, Henry J. McFarland, and Benton R. Wells, Partners as M. D. Wells and Company; Henry A. Rice, Jonathan Rice, William Stix, Daniel Eismond, and Benjamin Eismond, Partners as Rice, Stix and Company; Moses Burn, Doing Business under the Firm Name of the Boston Tailoring House; E. S. Jaffray, Howard S. Jaffray, John R. Woodruff, and Charles J. Hordefield, Partners as E. S. Jaffray and Company, and Burnham, Hanna, Munger & Co., Defendants. } Motion for a New Trial.

747 And now come the plaintiffs in the above-entitled cause and moves, each for themselves, individually and separately, the court to set aside the verdict of the jury heretofore rendered therein and grant a new trial thereof on the following grounds:

First. The court erred in receiving in evidence, over the plaintiffs' objection, the writ of attachment in the case of M. D. Wells and Company *versus* W. F. Wolfe and Son, the said writ being void in law, because the same was not returnable in point of time as required by law.

Second. The court erred in admitting in evidence the said writ of attachment in the case of M. D. Wells and Company *vs.* W. F. Wolfe and Son, because said writ of attachment and all proceedings thereunder was and were annulled, discharged, vacated, dissolved, and set aside by virtue of a stipulation made and entered into between the attorneys of record of said M. D. Wells and Company and the attorney of record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said

stipulation being on file in said court and having been offered in evidence on the trial of this cause and marked Exhibit "Six," the said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to which said attachment and said judgment said stipulation refers.

Third. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of Burnham, Hanna, Munger & Company *vs.* W. F. Wolfe and Son, because said Burnham, Hanna, Munger and Company did not file under and make themselves parties to the action aforesaid, in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe and Son were defendants, for which reason the said writ of attachment in the said case of Burnham, Hanna, Munger and Company *vs.* W. F. Wolfe and Son, together with all proceedings in said last-mentioned cause, were and are void in law.

748 Fourth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the said case of Burnham, Hanna, Munger and Company *vs.* W. F. Wolfe and Son, because the said Burnham, Hanna, Munger and Company, although they brought said suit on the 26th day of December, 1890, and after the issue of the writ of attachment in the said case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said Burnham, Hanna, Munger and Company did not file an affidavit and written undertaking, together with a complaint, in the said cause of M. D. Wells and Company *vs.* said W. F. Wolfe and Son, which was then and there pending in said court and in which an affidavit and written undertaking for attachment had been executed and filed and a pretended writ of attachment had been issued and was then and there in the hands of said defendant to be levied on the property in controversy in this action.

Fifth. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, because said Sweet, Dempster and Company did not file under and make themselves parties to the action aforesaid in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe and Son were defendants, for which reason the said writ of attachment in the said case of Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, together with all proceedings in said last cause mentioned, were and are void in law.

Sixth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the said case of Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, because the said Sweet, Dempster and Company, although they brought said suit after the issue of the pretended writ of attachment

749 in the said case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said Sweet, Dempster and Company did not file an affidavit and written undertaking, together with a complaint, in the said cause of M. D. Wells and Company *vs.* said W. F. Wolfe and Son, which was then and there pending in said court and

in which an affidavit and written undertaking for attachment had been executed and filed and a pretended writ of attachment had been issued and was then and there in the hands of said defendant to be levied on the property in controversy in this action.

Seventh. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of A. Frankenthal *et al. vs.* W. F. Wolfe and Son, because said A. Frankenthal *et al.* did not file under and make themselves parties to the action aforesaid, in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe and Son were defendants, for which reason the said writ of attachment in the said case of A. Frankenthal *et al. vs.* W. F. Wolfe and Son, together with all proceedings in said last-mentioned cause, were and are void in law.

Eighth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the said case of A. Frankenthal *et al. vs.* W. F. Wolfe and Son, because the said A. Frankenthal *et al.*, although they brought said suit after the issue of the pretended writ of attachment in the said case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said A. Frankenthal *et al.* did not file an affidavit and written undertaking, together with a complaint, in the said cause of M. D. Wells and Company *vs.* said W. F. Wolfe and Son, which was then and there
pending in said court and in which an affidavit and written
750 undertaking for attachment had been executed and filed
and a pretended writ of attachment had been issued and was then and there in the hands of said defendant to be levied on the property in controversy in this action.

Ninth. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of John V. Farwell and Company *vs.* W. F. Wolfe and Son, because said John V. Farwell and Company did not file under and make themselves parties to the action aforesaid in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe and Son were defendants, for which reason the said writ of attachment in the said case of John V. Farwell and Company *vs.* W. F. Wolfe and Son, together with all proceedings in said last-mentioned cause, were and are void in law.

Tenth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the said case of John V. Farwell and Company *vs* W. F. Wolfe and Son, because the said John V. Farwell and Company, although they brought said suit after the issue of the pretended writ of attachment in the said case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said John V. Farwell and Company did not file an affidavit and written undertaking, together with a complaint, in the said cause of M. D. Wells and Company *vs.* W. F. Wolfe and Son, which was then and there pending in said court and in which an affidavit and written undertaking for attachment had been executed and filed and a pretended writ of attachment had been issued and was then and there in the hands of said defendant to be levied on the property in controversy in this action.

Eleventh. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of Rice, Stix and Company *vs.* W. F. Wolfe and Son, because said
751 Rice, Stix and Company did not file under and make themselves parties to the action aforesaid in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe and Son were defendants, for which reason the said writ of attachment in the case of Rice, Stix and Company *vs.* W. F. Wolfe and Son, together with all proceedings in said last-mentioned cause, were and are void in law.

Twelfth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the said case of Rice, Stix and Company *vs.* W. F. Wolfe and Son, because the said Rice, Stix and Company, although they brought said suit after the issue of the pretended writ of attachment in the said case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said Rice, Stix and Company did not file an affidavit and written undertaking, together with a complaint, in the said cause of M. D. Wells and Company *vs.* said W. F. Wolfe and Son, which was then and there pending in said court and in which an affidavit and written undertaking for attachment had been executed and filed and a pretended writ of attachment had been issued and was then and there in the hands of said defendant to be levied on the property in controversy in this action.

Thirteenth. The court erred in receiving in evidence, over the objection of said plaintiffs, the writ of attachment in the case of Moses Burn *vs.* W. F. Wolfe and Son, because said Moses Burn did not file under and make himself a party to the action aforesaid in which M. D. Wells and Company were plaintiffs and said W. F. Wolfe and Son were defendants, for which reason the said writ of attach-
752 ment in the said case of Moses Burn *vs.* W. F. Wolfe and Son, together with all proceedings in said last-mentioned cause, were and are void in law.

Fourteenth. The court erred in admitting in evidence, over the objection of said plaintiffs, the said writ of attachment in the said case of Moses Burn *vs.* W. F. Wolfe and Son, because the said Moses Burn, although he brought said suit after the issue of the writ of attachment in the said case of M. D. Wells and Company against said W. F. Wolfe and Son, still the said Moses Burn did not file an affidavit and written undertaking, together with a complaint, in the said cause of M. D. Wells and Company *vs.* said W. F. Wolfe and Son, which was then and there pending in said court and in which an affidavit and written undertaking for attachment had been executed and filed and a pretended writ of attachment had been issued and was then and there in the hands of said defendant to be levied on the property in controversy in this action.

Fifteenth. The court erred in admitting in evidence the said writ of attachment in the case of Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, because said writ of attachment and all proceedings thereunder was and were annulled, discharged, vacated, dissolved, and set aside by virtue of a stipulation made and entered

into between the attorneys of record of said Sweet, Dempster and Company and the attorney of record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said stipulation being on file in said court and having been offered in evidence on the trial of this cause and marked Exhibit "Six," said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.*
753 W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to which said attachment and said judgment said stipulation refers.

Sixteenth. The court erred in admitting in evidence the said writ of attachment in the case of A. Frankenthal *et al. vs.* W. F. Wolfe and Son, because said writ of attachment and all proceedings thereunder was and were annulled, discharged, vacated, dissolved, and set aside by virtue of a stipulation made and entered into between the attorneys of record of said A. Frankenthal *et al.* and the attorney of record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said stipulation being on file in said court and having been offered in evidence on the trial of this cause and marked Exhibit "Six," the said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to which said attachment and said judgment said stipulation refers.

Seventeenth. The court erred in admitting in evidence the said writ of attachment in the case of John V. Farwell and Company *vs.* W. F. Wolfe and Son, because said writ of attachment and all proceedings thereunder was and were annulled, discharged, vacated, dissolved, and set aside by virtue of a stipulation made and entered into between the attorneys of record of said John V. Farwell and Company and the attorney of record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said stipulation being on file in said court and having been offered in evidence on the trial of this cause and
754 marked Exhibit "Six," the said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to which said attachment and said judgment said stipulation refers.

Eighteenth. The court erred in admitting in evidence the said writ of attachment in the case of Rice, Stix and Company *vs.* W. F. Wolfe and Son, because said writ of attachment and all proceedings thereunder was and were annulled, discharged, vacated, dissolved, and set aside by virtue of a stipulation made and entered into between the attorneys of record of said Rice, Stix and Company and the attorney of record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said stipulation being on file in said court and having been offered in evidence on the trial of this cause and

marked Exhibit "Six," the said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to which said attachment and said judgment said stipulation refers.

Nineteenth. The court erred in admitting in evidence the said writ of attachment in the case of Moses Burn *vs.* W. F. Wolfe and Son, because said writ of attachment and all proceedings thereunder was and were annulled, discharged, vacated, dissolved, and set aside by virtue of a stipulation made and entered into between the attorneys of record of said Moses Burn and the attorney of
755 record for the defendants in said cause, W. F. Wolfe and Son, who is also the attorney of record for plaintiffs herein, said stipulation being on file in said court and having been offered in evidence on the trial of this cause and marked Exhibit "Six," the said stipulation having been so offered in connection with the judgment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, heretofore rendered in and by this court, annulling the attachment in said last-named cause, to which said attachment and said judgment said stipulation refers.

Twentieth. That the court erred in admitting in evidence the said writ of attachment, pleadings, affidavit in attachment, and other files in the said case of M. D. Wells and Company against W. F. Wolfe and Son, over the objection of the plaintiffs herein, because by the said affidavit in attachment and the petition of the plaintiffs in the said case of M. D. Wells and Company *vs.* W. F. Wolfe and Son it affirmatively appeared that the claim sued upon was partly due and partly not due, and by said pleadings and other files in said case it also affirmatively appeared that but one writ of attachment had been issued therein to cover that part of the debt which was not due as well as that part of the debt which was alleged to be due. Wherefore said writ of attachment and all proceedings thereunder in said case of M. D. Wells and Company *vs.* W. F. Wolfe and Son were and are irregular and void.

Twenty-first. The court erred in admitting in evidence letters and statements purporting to have been written by W. F. Wolfe and Son to John V. Farwell and Company, John G. Miller and Company, Burnham, Hanna, Munger and Company, Rice, Stix and Company,
756 A. Frankenthal *et al.*, E. S. Jaffray and Company, and M. D. Wells and Company, and other letters containing a reference to the financial standing of the said firm of W. F. Wolfe and Son, because under the statutes of the State of Nebraska, which were in force in the Territory of Oklahoma at the time the said cause of M. D. Wells and Company *vs.* W. F. Wolfe and Son was commenced in this court, an attachment upon a claim not due may not lawfully be issued upon the ground of false and fraudulent representations made for the purpose of inducing a sale of chattels, and it being a fact that the goods in controversy in this action were seized and taken from the plaintiffs herein by the defendant herein under and by virtue of a pretended writ of attachment in the said case of M. D. Wells and Company *vs.* W. F. Wolfe and Son, and the claim

in said case upon which action was brought not being due at the time said action was brought, all of said testimony, letters, and statements which were offered solely for the purpose of showing false and fraudulent representations *was* incompetent, irrelevant, and immaterial and not within the issues in this case and *was* so objected to by these plaintiffs at the time the same *was* so offered.

Twenty-second. The court erred in receiving in evidence, over the objection of the plaintiffs herein, the writs of attachment and other files in the cases of Burnham, Hanna, Munger and Company *vs.* W. F. Wolfe and Son, Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, John V. Farwell and Company *vs.* W. F. Wolfe and Son, Rice, Stix and Company *vs.* W. F. Wolfe and Son, Moses Burn *vs.* W. F. Wolfe and Son, and A. Frankenthal *et al. vs.* W. F. Wolfe and Son, and each of said last-named cases, because the return of the defendant, as sheriff, and the testimony in this case conclusively shows that the said defendant first took
757 from the possession of the plaintiffs herein the property in controversy in this action under and by virtue of the pretended writ of attachment issued in the aforesaid case of M. D. Wells and Company *vs.* W. F. Wolfe and Son, which pretended writ of attachment was and is, for the reasons hereinbefore stated, void and of no effect.

Twenty-third. The court erred in permitting Joseph Wisby, C. G. Horner, and J. R. Keaton and each of them to refer in their final argument in the case and to aver in such final argument before the jury to an alleged failure in business of William F. Wolfe in Cincinnati, Ohio, whereas in truth and in fact there was no evidence of such failure on the part of said Wolfe admitted on the trial of this cause.

Twenty-fourth. The defendant was guilty of misconduct, in this, to wit: Upon the final argument of said cause before the jury said attorneys, Wisby, Horner, and Keaton, each alleged and averred, argued and insinuated, to and before said jury that, at Cincinnati, Ohio, several years ago William F. Wolfe had failed in business and had not paid his creditors in full, although there was no evidence admitted upon the trial of said cause to such effect.

Twenty-fifth. The court erred in permitting Joseph Wisby, in his final address to the jury, to allege and insinuate that the real property referred to in the evidence in this case as the lots upon which the business house of said W. F. Wolfe and Son at Oklahoma city was situated had been conveyed by deed to J. T. Clark, of Topeka, Kansas, although there was no evidence that such conveyance had in fact been made in this case.

758 Twenty-sixth. The verdict is not sustained by sufficient evidence.

Twenty-seventh. The verdict of the jury is contrary to law.

Twenty-eighth. The court erred in admitting in evidence a pretended copy of a letter to W. F. Wolfe and Son, written by John G. Mille*t*, without proof of the loss of the original letter or other evidence laying a foundation for secondary evidence of its contents.

Twenty-ninth. The court erred in admitting in evidence the pre-

tended copy of a letter to W. F. Wolfe and Son, written by ——
——, without proof of the loss of the original letter or other evidence laying a foundation for secondary evidence of its contents.

Thirtieth. The court erred in excluding the following evidence offered by the plaintiffs, viz., the evidence of Harper S. Cunningham, by whose testimony said plaintiffs offered to show that the attorney of said plaintiffs and the attorney of W. F. Wolfe and Son *was* not present and had no opportunity to be present, but had been excused from attendance upon said court, and had no notice that any proceedings of that kind were to be had in this court at the time said court entered a pretended order in each of the following cases, setting aside the judgment theretofore rendered, discharging and dissolving the attachment therein, to wit, the case of M. D. Wells and Company *vs.* W. F. Wolfe and Son, Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, A. Frankenthal *et al. vs.* W. F. Wolfe and Son, Rice, Stix and Company *vs.* W. F. Wolfe and Son, John V. Farwell and Company *vs.* W. F. Wolfe and Son, and Moses Burn *vs.* W. F. Wolfe and Son.

Thirty-first. The court erred in refusing to pass upon the sufficiency of the stipulation in evidence in said cause, which was
759 executed by Bierer and Cotteral, Cunningham and Wisby, and Harper S. Cunningham, and which stipulation was offered in evidence and marked Exhibit "Six."

Thirty-second. The court erred in failing to hold and determine that under the stipulation so, as aforesaid, offered in evidence, marked Exhibit "Six," together with the record of the judgment in this court discharging the writ of attachment in the case of E. S. Jaffray and Company *vs.* W. F. Wolfe and Son, the several writs of attachment in the cases of Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, John V. Farwell and Company *vs.* W. F. Wolfe and Son, M. D. Wells and Company *vs.* W. F. Wolfe and Son, Rice, Stix and Company *vs.* W. F. Wolfe and Son, A. Frankenthal *et al. vs.* W. F. Wolfe and Son, and Moses Burn *vs.* W. F. Wolfe and Son, were and are to be treated, considered, and determined by this court to be annulled, discharged, set aside, and dissolved.

Thirty-third. The court erred in refusing to give instructions asked by said plaintiffs and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

Thirty-fourth. The court erred in giving instructions on its own motion numbered 2, 3, 7, 8, 9, 12, 13, 15, 16, 17, 18, and 19.

Thirty-fifth. The court erred in receiving in evidence, over the objection of the said plaintiffs, the pleadings and files in each of the cases of Sweet, Dempster and Company *vs.* W. F. Wolfe and Son, A. Frankenthal *et al. vs.* W. F. Wolfe and Son, John V. Farwell and Company *vs.* W. F. Wolfe and Son, Rice, Stix and Company *vs.* W. F. Wolfe and Son, and Moses Burn *vs.* W. F. Wolfe and Son, for the reason that there was no evidence offered in this cause that the defendant took or claimed to have taken or seized any of the goods in controversy in this action under or by virtue of any writ issued in either of said last above named cases, and for
760 the further reason that no evidence was offered on the trial of this cause that the said defendant claimed to have ac-

quired any right to take or have the possession of any of the goods in controversy in this action by virtue of any writ issued or proceedings had in any or either of the last above entitled cases, and for the further reason that in his answer in this case the defendant does not aver or in any manner claim that he at any time took or held possession or claimed any right to any of the property in controversy in this action under and by virtue of any writ issued or proceeding had in any or either of said last above mentioned cases.

HARPER S. CUNNINGHAM,
Attorney for Plaintiffs.

A. H. VANCE,
By HARPER S. CUNNINGHAM,
His Attorney.

HENRY W. KING & CO.,
By A. H. ELLIS,
W. K. JAMES,
HARPER S. CUNNINGHAM,
Their Attorneys.

TOOTLE, WHEELER & MOTTER,
By A. H. ELLIS,
W. K. JAMES,
HARPER S. CUNNINGHAM,
Their Attorneys.

THE BANK OF TOPEKA,
By HARPER S. CUNNINGHAM,
Its Attorney.

THE CENTRAL NATIONAL BANK,
By HARPER S. CUNNINGHAM,
Its Attorney.

761 Said motion for a new trial is endorsed on the back as follows:

"Territory of Oklahoma, Logan county. District court. Henry W. King *et al*, plaintiffs, *v.* C. H. De Ford, defendant. Motion for a new trial. Filed March 26, '95. Louis E. Pitts, clerk. A. H. Ellis, W. K. James, Harper S. Cunningham, att'ys for pl'ffs."

762 And thereafter and on the 27th day of March, 1895, the said cause was argued and submitted to the court on the above and foregoing motion of the plaintiffs for a new trial, and the court took the same under advisement, with leave to the parties to file written or printed arguments and briefs on said motion.

And the said court from thence until the twenty-ninth day of December, 1897, retained the said cause under advisement on the said motion for a new trial, at which time the said court ruled thereon and entered its ruling on the journal of said court in words and figures following, to wit:

763 HENRY W. KING & COMPANY, TOOTLE, WHEELER & Motter, The Central National Bank, The Bank of Topeka, and A. H. Vance, Plaintiffs,
vs.
CHARLES H. DE FORD, Defendant. } No. 651.

Now, on this twenty-ninth day of December, A. D. 1897, the said cause coming on for decision upon the motion of the plaintiffs for a new trial in said cause, the said motion having been argued and submitted to the consideration of the court on the twenty-seventh day of March, 1895, and from thence having been held under advisement by said court, and the court now being fully advised in the premises from the arguments and briefs of counsel, it is by the court ordered that the said motion for a new trial be, and the same is hereby, overruled.

To which order overruling said motion for a new trial the said defendants duly excepted and except-.

764 And thereupon said cause came on for hearing on the application of the defendant for judgment upon the verdict of the jury, and, the court being sufficiently advised in the premises, it is by the court considered, ordered, and adjudged that the plaintiffs and each of them take nothing by this action, and that the defendant go hence without day, and that he recover his costs of the said plaintiffs and each of them in this behalf expended, taxed at the sum of — dollars.

To which said judgment and each and every part thereof the said plaintiffs and each of them duly excepted and except.

And thereupon the plaintiffs, upon their application, are given an extension of time of sixty days from this twenty-ninth day of December, A. D. 1897, in which to make and serve on the counsel for the defendant their case-made for review in the supreme court of the Territory of Oklahoma, and the defendant is granted fifteen days after the service of such case made in which to suggest amendments, and which case-made shall be settled upon five days' written notice of the time and place of presentation of the same to the judge who tried said cause for signing and settlement. Hereof let execution issue.

765 The above and foregoing case-made contains a full, true, and complete transcript of the pleadings and issues upon which said cause was tried, and contains a full, true, and complete transcript of all of the testimony introduced or offered on the trial of said cause, together with all of the rulings thereon and together with all of the instructions given by the court to the jury and the motion for a new trial and ruling thereon and the final judgment in said cause, and is thus respectfully submitted to counsel for defendant for their consideration and for their suggestion of amendments.

(Signed) W. K. JAMES,
HARPER S. CUNNINGHAM, AND
ASP, SHARTEL & COTTINGHAM,
Attorneys for Plaintiffs.

766 Due service of the above and foregoing case-made is hereby acknowledged by the undersigned, attorneys for the defendant, to have been made on us this 25th day of February, A. D. 1898.

Feb'y 25, 1898.

(Signed) COTTERAL & HORNER,
Attorneys for Defendant.

767 The attorneys for the defendant will take notice that the plaintiffs will present the above and foregoing case-made to the honorable judge who tried said cause, at his chambers, in Guthrie, Oklahoma, for signing and settlement, on the 21st day of March, A. D. 1898, at the hour of nine o'clock a. m., or as soon thereafter as counsel can be heard.

(Signed) ASP, SHARTEL & COTTINGHAM,
Attorneys for Plaintiffs.

Service of the above notice accepted this 15th day of March, A. D. 1898.

(Signed) COTTERAL & HORNER,
Attorneys for Defendant.

No amendments to suggest.

(Signed) COTTERAL & HORNER,
Att'ys for Defendant.

768 Now, on this fifteenth day of March, A. D. 1898, is presented to me, the undersigned judge, who tried said cause, the above and foregoing case-made for signing and settlement, and, after having carefully examined the same and being satisfied with the same, I do hereby sign and settle the same as the case-made in said cause.

The plaintiffs appearing by Asp, Shartel & Cottingham, their attorneys, and the defendant appearing by Cotteral & Horner, *their* attorneys.

And the clerk of said court is hereby ordered to file the said case-made in said cause as the case-made therein and to attest the same with his signature and the seal of said court.

(Signed) FRANK DALE,
Late Judge of the District Court of Logan County, Oklahoma Territory, Who Presided at the Trial of said Cause.

Attest: M. C. HART, *Clerk,*
[SEAL.] By T. A. NEAL, *Deputy.*

Filed Aug. 17, 1898.

BENJ. F. HEGLER,
Clerk Sup. Ct.

Endorsed on back: Filed Aug. 9, 1898. M. C. Hart, clerk dist. court.

769 And thereafter and on the 17th day of August, 1898, a summons in error was issued out of said court for the defendant in error, Charles H. De Ford, and was duly returned into said court on the 22d day of August, 1898; which said summons in error, together with the return of the officer making service thereof and all endorsements thereon, is in words and figures following, to wit:

770 TERRITORY OF OKLAHOMA, } ss:
Supreme Court, }

The Territory of Oklahoma to the sheriff of Logan county, Greeting:

You are hereby commanded to notify Cotteral & Horner and Joseph Wisby, attorneys for Charles H. De Ford, defendant in error, that William C. Browning, Edward W. Dewey, and Francis King, the sole surviving partners composing the firm of Henry W. King & Co.; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, partners as Tootle, Wheeler & Motter; the Central Nat'l Bank of Topeka, Kansas; the Bank of Topeka (Kansas), and A. H. Vance, plaintiffs in error, did on the 17th day of August, A. D. 1898, file in the clerk's office of the supreme court of Oklahoma Territory a petition in error and transcript of record or case-made, the object of which is to obtain a reversal of a certain judgment rendered by the district court, sitting within and for the county of Logan and Territory of Oklahoma, in an action pending before said court, wherein the said plaintiffs in error were plaintiffs and the said def't in error was defendant.

You will make due return of this summons in error on or before the 3rd day of September, A. D. 1898.

Witness my hand and the seal of the supreme court, affixed hereto at my office, in Guthrie, this 17th day of August, A. D. 1898.

[SEAL.] BENJ. F. HEGLER,
Clerk Supreme Court.

Endorsed on back: No. 745. Supreme court, Territory of Oklahoma. Henry W. King & Co. *et al. vs.* Chas. H. De Ford. Summons in error. Issued Aug. 17th, 1898. Returnable Sep. 3rd, 1898. Filed Aug. 22, '98. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy.

771 TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

I received this summons in error on the 17th day of August, 1898, at 9 o'clock a. m., and served the same on the 22d day of August, 1898, by delivering to Cotteral & Horner, Aug. 22, 1898, a true copy in Logan Co., O. T. Joseph Wisby not found in Logan Co., O. T.

(Signed) F. M. RINEHART, *Sheriff,*
By C. E. CARPENTER, *Deputy.*

Fees.

Service	50
1 not found	5
2 copy	50
	105

772 That thereafter and on the third day of January, 1899, the defendant in error filed in said cause a certain motion in words and figures following, to wit:

773 In the Supreme Court of Oklahoma Territory.

HENRY W. KING & CO. ET AL., Plaintiffs in Error, *vs.* CHARLES H. DE FORD, Defendant in Error.	Number 745. Motion to Dismiss.

Comes now the said defendant in error and moves the court to dismiss this proceeding in error, for the reason that no exceptions were saved by plaintiffs in error to the judgment of the court below overruling their motion for a new trial. (See Record, page 730.) It would seem from the record that "defendants" excepted to the ruling on the motion for a new trial. Just how this came we are not able to state, but it will be observed that it was the plaintiffs' motion for a new trial, and that the ruling of the court thereon was adverse to the plaintiff. Therefore the exception should have been saved by plaintiffs and not by defendant. It may be, and perhaps is, that this was a clerical error, but it will be seen from the authorities cited below that it is an error which cannot be cured.

Argument and List of Authorities.

No ruling of the district court can be reviewed by the supreme court in the absence of an exception. This proposition is too well settled to admit of argument.

Hostetter *v.* Hoke, 17 Kansas, p. 81.

And see generally article on exceptions in 8 Ency. of Pr.

Counsel for appellants will doubtless contend that the court should construe the recital in the record in favor of plaintiffs
774 below—that is, they will contend that while the language is that "defendants excepted," it should be construed to mean plaintiffs excepted. This cannot be done. It has been settled by repeated decisions of the supreme court of Kansas that a case-made cannot be changed or altered in any particular whatever. In the case of Grand Lodge of Ancient Order United Workmen *v.* Furman, decided by this court (52 Pac., 932), we, as counsel for plaintiff in error, made an earnest effort in behalf of the proposition that the court did have some discretion in dealing with cases made. In so doing we ransacked the authorities and, we think, exhausted every

argument that could be made in favor of this view; but this court held that there was no power to change or alter a case-made after it was signed and settled, and the court decided against us, although expressing regret that the rule was so rigid.

It will be found upon investigation that the rule in regard to cases-made is extremely technical. In fact, the view established by all the courts having statutes similar to our own is that a record once made for the supreme court becomes final, and can only be taken for what it is, regardless of any questions of hardship, inadvertence, and so forth. In the Furman case, referred to above, will be found quotations from a number of Kansas cases. It will be seen from these cases that the questions presented to the court were often of a character to call for the most favorable consideration and indulgence, but in every instance the court held that it was powerless; that it could only take the record as it found it, and that however much of a hardship it might seem to construe the record literally, it was powerless to do otherwise. There are some New York cases holding that the court has some discretion in dealing with the record, but this court in the Furman case, *supra*, distinguished the New York cases, and held that they were based upon a statute entirely different from ours. It would seem that under the
775 New York statute it would be proper in a case of this character to refer the record back to the lower court for resettlement. See cases cited in 3 Ency. of Pr., p. 903.

But, as this court has already held that the New York cases are not applicable under our statute, they, of course, can afford counsel no relief in this case. So far as they are in point at all, they are against counsel, because they hold that the proper remedy is to refer the case back for resettlement. They do not hold that the supreme court can aid the matter in any way; and as our court has already held that a case-made cannot be referred back under any circumstances for resettlement, it follows on the New York cases that counsel is without a remedy in this case. This court has held that the supreme court can do nothing, and the New York court has held the same, so that to this extent our court is corroborated by the New York court. But our court has gone further and held that there is no remedy whatever. It will be found that all the courts having the practice by case-made have adopted the same rule in regard to this question, excepting the New York court, which, as stated, is governed by a different statute. Under the rule the court can supply nothing by intendment or otherwise. The courts generally admit no variation of this rule. Any variation of the rule would necessarily be put upon the ground that it could be done in a proper case, and as to what constituted a proper case would be the same as any other question of a similar character—that is, it would be determined on the grounds of right, common sense, and justice. As stated above, if this principle were admitted it would destroy the rule. The rule is that nothing can be done to change or alter a case-made or to correct a mistake therein. If, by inadvertence or otherwise, something is left out of a case-made
776 or it does not speak the truth, these are matters which counsel should be on their guard against. There is nothing in

the law providing for the correction of errors in such records, and in the absence of a statute on the subject the courts have uniformly held that they were powerless to intervene. It is immaterial how equitable or *in*equitable the rule may be in operation, and it is also immaterial how apparent the error may be. The court cannot add to or take away from the case-made, and the court cannot construe language contrary to its ordinary sense and meaning. There is a good illustration of this in the case of Mullaney *v.* Humes (Kansas), 27 Pac., p. 817. The recitation in the record was "that the foregoing contains a true and correct statement of the pleadings, motions, orders, evidence, etc.," and the certificate of the trial judge was to the effect that "the foregoing above case-made and the amendments thereto have been duly suggested, etc." Following this recitation and the certificate of the judge was the stenographer's transcript. It was contended that the word "foregoing" should be construed to cover what comes after. But the supreme court of Kansas held that the language used could not be distorted from its plain meaning, and they therefore dismissed the proceeding. It may seem that this ruling was technical, but an examination of all the authorities will show that the making of records is a technical matter. In New York they have a statute allowing corrections to be made after a record is signed and settled. But the very fact of this statute shows that such would not be the rule in the absence of the statute; otherwise there would be no need of the statute; and, as we have shown, in all the other States having the practice by case-made there is no power to vary a record in any way,
777 either by adding to it or by construing a statement to mean directly the opposite of what it says. If this rule seems to be harsh or narrow, the remedy is in the hands of the legislature. As the law now stands the court has no power to interfere with the record in any way or to interpret it in any way excepting in accordance with its plain meaning.

Respectfully submitted.

(Signed) JOS. WISBY &
(Signed) COTTERAL & HORNER,
Attorneys for Defendant in Error.

Endorsed on back: 745. Henry W. King & Co. *vs.* Chas. H. De Ford. Motion to dismiss. Filed Jan'y 3, '99. Benj. F. Hegler, clerk sup. ct. Jos. Wisby & Cotteral & Horner.

778 In Supreme Court, Oklahoma Territory.

HENRY W. KING & CO. ET AL. *v.* CHARLES H. DE FORD. } Acceptance of Service.

I hereby acknowledge service of copy of motion to dismiss in above-entitled cause.

(Signed) JOHN W. SHARTEL,
Attorney for Plaintiff in Error.

Endorsed on back: 745. King & Co. *v.* De Ford. Service of copy of motion to dismiss. Cotteral & Horner. Filed Jan. 3, '99. Benj. F. Hegler, clerk sup. ct., by W. E. Ketsch, deputy.

779 And thereafter, to wit, January 5, 1899, plaintiffs in error filed their suggestions against said motion to dismiss: which suggestions read in words and figures as follows, to wit:

780 In the Supreme Court of the Territory of Oklahoma.

HENRY W. KING & COMPANY ET AL., Plaintiffs in Error,
against
CHARLES H. DE FORD, Defendant in Error. } No. 745.

Suggestions against Motion to Dismiss.

Counsel in their motion to dismiss, which is based on the ground that the exception to the order overruling the motion for a new trial recites "defendants except" instead of "plaintiffs except," say: "Therefore the exception should have been saved by the plaintiffs and not by the defendant. It may be, and perhaps is, that this was a clerical error." That is just what we insist it is, if material at all to present the question raised.

There is, however, in the same order and in the same judgment and in the same entry, found on page 731 of the record, the following: "To which said judgment and each and every part thereof the said plaintiffs and each of them duly excepted and except." This searches the entire judgment and is a recitation of the fact that an exception was taken by each and all of the plaintiffs to each and every part of the entry.

The intention of the plaintiffs to except is manifest, and their desire not to acquiesce in the ruling of the court exhibited in the same entry taking leave to make a case for review in the supreme court of the Territory, and if the exception were not recited at the latter end of the entry the court could very clearly construe the exception to the specific ruling on the motion for a new trial to be that of the plaintiffs and not of the defendant, and to be merely a clerical error. The Kansas supreme court nor any other court, in the height of refinements that have been sometimes indulged in with respect to the technical accuracy of records of this kind, have never gone so far as to say that clerical errors may not be disregarded where the context demonstrates that to be the fact, and all of the cases cited by counsel are cases where the errors are not clerical or where there is not sufficient in the record to show them to be such. The very admission of counsel that the error is a clerical error admits the motion out of court.

781 In Edmonson *vs.* Beals, 27 Kans., 656, the law of the case is stated in the syllabus to be: "Mere clerical errors in a record brought to this court for review will always be disregarded."

The word "defendants" is used when there is but one defendant. It is manifest that the defendant secured everything in the ruling

on the motion for a new trial that he could ask, and it would be folly to construe the record as showing him as taking an exception. The purpose of the plaintiffs is present and manifest to except, and and it is therefore abundantly shown that the error is merely a clerical one.

In Le Masters *vs.* Johnson, 12 Ind., 385, "plaintiff excepted" instead of "plaintiffs excepted" was held to be a clerical error and not fatal to the exception.

In McElvoy *vs.* Russell, cited from clause "N," page 492, vol. 3, Century Digest, it appears a similar case was adjudged by the supreme court of Kentucky to the effect that where the statement required by code, section 739, conform to the law except that "appellants" appear by evident mistake for "appellees" the court will not for that defect strike the case from the docket. 8 Ky. Law Rep., 523.

As to the sufficiency of the second exception, if the first is to be disregarded, we cite the court to K. P. R'y Co. *vs.* Nichols, 9 Kans., 235 and Bard *vs.* Elston, 31 Kans., 274.

The recitation of the plaintiffs' exception in the second instance is: "To which said judgment and each and every part thereof said plaintiffs and each of them duly excepted and except." This searches every part of the judgment, and under the rule stated in Bard *vs.* Elston it is to be presumed that the plaintiff entered a several exception at the time to each part of the proceedings of the court embodied in that judgment, severally and individually.

It is therefore respectfully submitted that the motion to dismiss is without merit and should be overruled.

HENRY E. ASP,
JOHN W. SHARTEL, &
J. R. COTTINGHAM,
Attorneys for Plaintiffs in Error.

Endorsed as follows: No. 745. In the supreme court of Oklahoma Territory. Henry W. King & Co. *et al. vs.* Chas. H. De Ford. Suggestions against motion to dismiss. Filed Jan'y 5, '99. Benj. F. Hegler, clerk sup. ct. John W. Shartel and Asp & Cottingham, att'ys for pl'tffs in error.

782 And thereafter and on the 7th day of January, and on the 11th day of February respectively, the court made certain orders and rendered certain judgments in said cause; which orders and judgments appear on the journal of said court in the words and figures following, to wit:

783 WILLIAM C. BROWNING, EDWARD W. DEWEY, and FRANCIS King, the Sole Surviving Partners Composing the Firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, Partners under the Firm Name and Style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a National Banking Corporation; The Bank of Topeka, a Corporation Organized under the Laws of the State of Kansas, and A. H. Vance, Plaintiffs in Error,

against

CHARLES H. DE FORD, Defendant in Error.

Now, on this seventh day of January, 1899, said cause coming on for decision on the motion of the defendant in error to dismiss the same, and the court, being duly advised in the premises, overrules said motion; to which ruling of the court said defendant in error then and there excepted.

JNO. H. BURFORD,
Chief Justice.

[Endorsed:] Wm. C. Browning *vs.* Chas. H. De Ford. Journal entry.

784 WILLIAM C. BROWNING, EDWARD W. DEWEY, and FRANCIS King, the Sole Surviving Partners Composing the Firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, Partners under the Firm Name and Style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a National Banking Corporation; The Bank of Topeka, a Corporation Organized under the Laws of the State of Kansas, and A. H. Vance, Plaintiffs in Error,

against

CHARLES H. DE FORD, Defendant in Error.

Now, on this eleventh day of February, A. D. 1899, said cause coming on for final decision by the court, and the court having duly considered of its judgment in said cause and being duly advised in the premises, it is hereby considered, ordered, and adjudged that the judgment of the lower court be, and the same is hereby, affirmed in all things; to which judgment the said plaintiffs in error and each of them duly excepted and except.

JNO. H. BURFORD,
Chief Justice.

785 Be it remembered that on the 27th day of February, 1899, there was filed in said court a petition for a writ of error and assignment of errors in words and figures following, to wit:

786 In the Supreme Court of the Territory of Oklahoma.

WILLIAM C. BROWNING, EDWARD W. DEWEY, and FRANCIS KING, the Sole Surviving Partners Composing the Firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, Partners under the Firm Name and Style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a National Banking Corporation; The Bank of Topeka, a Corporation Organized under the Laws of the State of Kansas, and A. H. Vance, Plaintiffs in Error,
against
CHARLES H. DE FORD, Defendant in Error.

Come now the plaintiffs in error and say that on the eleventh day of February, 1899, this court entered judgment herein in favor of the defendant in error and against the plaintiffs in error, denying the petition in error of the plaintiffs in error for a reversal of the judgment of the district court of the county of Logan and Territory of Oklahoma complained of and affirming the said judgment at the cost of the said plaintiffs in error, and wherein in this court the plaintiffs in error allege manifest error was committed to their prejudice; all of which will appear more in detail from the assignment of errors which is filed with this petition.

Wherefore petitioners pray that a writ of error may issue in their behalf to the supreme court of said Territory, and that a transcript of the proceedings, record, and papers in the cause be duly authenticated and sent to the Supreme Court of the United States
787 for its revision, and the plaintiffs in error in this behalf also submit herewith the affidavit of Mr. John W. Shartel, attorney for said plaintiffs in error, showing the amount or value in controversy in this cause, exclusive of costs, to exceed the sum or amount of five thousand dollars ($5,000.00).

(Signed) JOHN W. SHARTEL,
Attorney for Plaintiffs in Error.

TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

John W. Shartel, being first duly sworn, on his oath deposes and says that he is one of the attorneys for the plaintiffs in error in the above-entitled cause; that he is familiar with the controversy in this cause, and knows that the amount at issue therein and involved therein and the amount in controversy therein to exceed, exclusive of costs, the sum of five thousand dollars.

(Signed) JOHN W. SHARTEL.

Subscribed in my presence and sworn to before me this 27th day of February, A. D. 1899.

[SEAL.] (Signed) BENJ. F. HEGLER,
Clerk Supreme Court,
By M. E. KETSCH, *Deputy.*

[Endorsed:] Supreme court of Oklahoma Territory. Wm. C. Browning *et al. vs.* Chas. H. De Ford. Petition for writ of error. John W. Shartel, att'y for pl'ffs in error.

788 In the Supreme Court of the United States.

WILLIAM C. BROWNING, EDWARD W. DEWEY, and FRANCIS KING, the Sole Surviving Partners Composing the Firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, Partners under the Firm Name and Style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a National Banking Corporation; The Bank of Topeka, a Corporation Organized under the Laws of the State of Kansas, and A. H. Vance, Plaintiffs in Error,

against

CHARLES H. DE FORD, Defendant in Error.

Assignment of Error.

The plaintiffs in error in this action, in connection with their petition for a writ of error and as a part thereof, make the following assignment of errors which they aver occurred upon the trial of this cause, to wit:

First. The court erred in affirming the judgment of the court below.

Second. The court erred in affirming the action of the court below in the following divers sundry particulars, to wit, to which exceptions were duly preserved in the court below and presented to this court by case-made:

789 *a.* The court erred in receiving in evidence, over the objections of the plaintiffs in error, the certain writs of attachment and each of the same in the case of M. D. Wells & Company against W. F. Wolfe & Son; in the case of Burnham, Hanna, Munger & Company against W. F. Wolfe & Son; in the case of Sweet, Dempster & Company against W. F. Wolfe & Son; in the case of A. Frankenthal and others against W. F. Wolfe & Son; in the case of John V. Farwell & Company against W. F. Wolfe & Son; in the case of Rice, Stix & Company against W. F. Wolfe & Son, and in the case of Moses Burn against W. F. Wolfe & Son, for the reason that said writs and each of the same are void in law and inadmissible in evidence as against these plaintiffs in error.

b. The court erred in admitting in evidence certain letters and statements purporting to have been written by W. F. Wolfe & Son to various parties claiming to be their creditors, to wit, John V. Farwell & Company, John G. Miller & Company, Burnham, Hanna, Munger & Company, Rice, Stix & Company, A. Frankenthal and others, E. S. Jaffray & Company, and M. D. Wells & Company, in which the said W. F. Wolfe & Son purported to make statements concerning their financial standing, because said letters were wholly immaterial, and the said creditors, having elected to attach the

property of their debtor, thereby waived any fraudulent and false representations made to them by such debtor.

c. That the verdict of the jury is not sustained by sufficient evidence.

d. That the verdict of the jury is contrary to law.

790 *e.* That the court erred in giving instruction numbered two to the jury on the trial of the case in the court below.

f. The court erred in giving instruction numbered three, upon its own motion, to the jury on the trial of the case in the court below.

g. The court erred in giving instruction numbered four, upon its own motion, to the jury on the trial of the case in the court below.

h. The court erred in giving instruction numbered five, upon its own motion, to the jury on the trial of the case in the court below.

i. The court erred in giving instruction numbered seven, upon its own motion, to the jury on the trial of the case in the court below.

j. The court erred in giving instruction numbered eight, upon its own motion, to the jury on the trial of the case in the court below.

k. The court erred in giving instruction numbered nine, upon its own motion, to the jury on the trial of the case in the court below.

l. The court erred in giving instruction numbered twelve, upon its own motion, to the jury on the trial of the case in the court below.

m. The court erred in giving instruction numbered thirteen, upon its own motion, to the jury on the trial of the case in the court below.

791 *n.* The court erred in giving instruction numbered fifteen, upon its own motion, to the jury on the trial of the case in the court below.

o. The court erred in giving instruction numbered sixteen, upon its own motion, to the jury on the trial of the case in the court below.

p. The court erred in giving instruction numbered seventeen, upon its own motion, to the jury on the trial of the case in the court below.

q. The court erred in giving instruction numbered eighteen, upon its own motion, to the jury on the trial of the case in the court below.

r. The court erred in giving instruction numbered nineteen, upon its own motion, to the jury on the trial of the case in the court below.

s. The court erred in overruling the plaintiffs' motion for a new trial in the court below.

t. The court erred in rendering judgment on said verdict in favor of the defendant and against these plaintiffs in error and each of them.

All of which errors herein scheduled were committed by the trial court to the manifest injury of the said plaintiffs and each and all of them, and each and all of said errors were by the supreme court of said Territory affirmed, and in respect to each and all of the same it is by the plaintiffs in error alleged that the supreme court of said Territory erred to their manifest injury and prejudice.

792 Third. The plaintiffs in error allege that the court committed error in holding that the evidence in the court below was sufficient to justify the verdict of the jury.

Fourth. The court below erred in holding as a principle of law that where goods have been fraudulently obtained by means of false representations as to the financial standing of the debtor, and were such creditors elect to sue for the purchase price of such goods and proceed by the attachment of the property claimed to belong to the debtor, that a party previously taking a mortgage on such goods to secure an antecedent debt, with knowledge of such fraudulent representations, must surrender such property to such attachment creditors.

Wherefore the plaintiffs in error pray that said order and judgment herein complained of be reversed.

(Signed) JOHN W. SHARTEL,
Attorney for Plaintiffs in Error.

[Endorsed:] No. 745. United States Supreme Court. Wm. C. Browning *et al. vs.* Chas. H. De Ford. Assignments of error. Filed Feb. 27, '99. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy. John W. Shartel, att'y for pl'ff- in error.

793 Be it further remembered that on the 27th day of February, 1899, there was filed in said cause a writ of error and a copy of said writ of error deposited in said court in words and figures following, to wit:

794 THE UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, }

The President of the United States of America to the honorable judges and clerk of the supreme court of the Territory of Oklahoma, Greeting:

Because in the record of proceedings, as also in the rendition of the judgment of a plea which is in said supreme court of the Territory of Oklahoma, before you, being the highest court of law and equity of the said Territory in which a decision can be had in the said suit between William C. Browning, Edward Dewey, and Francis King, the sole surviving partners composing the firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, parters under the firm name and style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a national banking corporation; The Bank of Topeka, a corporation organized under the laws of the State of

Kansas, and A. H. Vance, as plaintiffs in error in the supreme court of said Territory, and Charles H. De Ford, as defendant in error in the supreme court of said Territory, wherein a judgment was rendered in said cause in favor of the said defendant in error and against the said plaintiffs in error, affirming the judgment of the court below and dismissing the action of the plaintiffs in error against the said defendant in error and adjudging that the said plaintiffs in error take nothing by their said petition in error
795 and affirming in all things the judgment of the lower court in favor of said defendant in error at the cost of the plaintiffs in error, and wherein the value of the property and the amount in controversy between said parties to said action, exclusive of costs, as shown by the affidavit of Mr. John W. Shartel, exceeded and exceeds the sum of five thousand dollars ($5,000.00), it appears therein that manifest error has happened, to the great damage of the said plaintiffs in error, William C. Browning, Edward W. Dewey, and Francis King, the sole surviving partners composing the firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, as partners under the firm name and style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a national banking corporation; The Bank of Topeka, a corporation organized under the laws of the State of Kansas, and A. H. Vance, plaintiffs in error, as by their complaint and assignment of errors appears, and we, being willing that the error, if any hath been committed, should be duly and speedily corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the copy of the record of proceedings aforesaid, with all things concerning the same, duly authenticated and verified, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, at the said Supreme Court, within thirty days from the date hereof, that, said record of proceedings aforesaid being inspected by the said Supreme Court, it may cause
796 further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 27th day of February, in the year of our Lord one thousand eight hundred ninety-nine, and in the year of the Independence of the United States of America the one hundred twenty-four.

Allowed:

[SEAL.] JNO. H. BURFORD,
Chief Justice of the Supreme Court of the Territory of Oklahoma.

Attest: BENJ. F. HEGLER,
Clerk of the Supreme Court of the Territory of Oklahoma,
By M. E. KETSCH, *Deputy.*

Endorsed on back: Filed Feb'y 27, '99. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy.

[Endorsed:] United States Supreme Court. Wm. C. Browning *et al. vs.* Chas. H. De Ford.

797 Be it further remembered that on the said 27th day of February, 1899, there was also filed in said cause a citation in pursuance to said writ of error, together with an acknowledgment of service thereof, in words and figures following, to wit:

798 THE UNITED STATES OF AMERICA, } *ss.*:
Territory of Oklahoma, }

To Charles H. De Ford, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States of America, to be holden at the city of Washington, on the 29th day of March, A. D. 1899, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of Oklahoma, wherein William C. Browning, Edward W. Dewey, and Francis King, the sole surviving partners composing the firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, partners under the firm name and style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a national banking corporation; The Bank of Topeka, a corporation organized under the laws of the State of Kansas, and A. H. Vance are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error prayed, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 27th day of February, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America the
799 one hundred twenty-fourth.

(Signed) JNO. H. BURFORD,
Chief Justice of the Supreme Court of the Territory of Oklahoma.

[SEAL.]

Attest: BENJ. F. HEGLER,
Clerk of the Supreme Court of the Territory of Oklahoma,
By M. E. KETSCH, *Deputy.*

We hereby accept personal service of this citation on behalf of the defendant in error, Charles H. De Ford, above named, this 27 day of February, A. D. 1899.

(Signed) COTTERAL & HORNER,
Attorneys for Defendant in Error in said Cause.

[Endorsed:] 745. In the Supreme Court of the United States. Supreme Court. Wm. C. Browning *et al. vs.* Chas. H. De Ford. Citation. Filed Feb'y 27, '99. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy.

800 Be it further remembered that on the said 27th day of February, 1899, there was filed in said cause a petition for an appeal, together with an assignment of errors on appeal, in words and figures following, to wit:

801 In the Supreme Court of the Territory of Oklahoma.

WILLIAM C. BROWNING, EDWARD W. DEWEY, and FRANCIS KING, the Sole Surviving Partners Composing the Firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, Partners under Firm Name and Style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a National Banking Corporation; The Bank of Topeka, a Corporation Organized under the Laws of the State of Kansas, and A. H. Vance, Plaintiffs in Error,
against
CHARLES H. DE FORD, Defendant in Error.

Petition for Appeal.

The above named plaintiffs in error, conceiving themselves aggrieved by the judgment entered in this court on the eleventh day of February, 1899, and by the judgment of affirmance of the judgment of the court below, do hereby appeal from said order and judgment of affirmance of the judgment of the district court of the county of Logan and Territory of Oklahoma to the Supreme Court of the United States, upon the reasons specified in the assignment of errors, which is filed herewith and hereto attached, and pray that their appeal may be allowed, and a transcript of the record, proceedings, and papers upon which said judgment and order were made, duly authenticated, may be sent to the United States Supreme Court.

Dated this 27th day of February, A. D. 1899.

(Signed) JOHN W. SHARTEL,
Attorney for Plaintiffs in Error.

802 TERRITORY OF OKLAHOMA, } ss:
County of Logan, }

John W. Shartel, being first duly sworn, on his oath deposes and says that he is one of the attorneys for the appellants above named; that he is familiar with the controversy involved in this case, and that the amount or value in controversy therein, exclusive of costs, exceeds the sum of five thousand dollars.

(Signed) JOHN W. SHARTEL.

Subscribed and sworn to before me this 27 day of February, A. D. 1899.

[SEAL.] BENJ. F. HEGLER,
Clerk Supreme Court,
By M. E. KETSCH, *Deputy.*

The foregoing claim of appeal is hereby allowed.

(Signed) JNO. H. BURFORD,
Chief Justice of the Supreme Court of the Territory of Oklahoma.

Attest:

[SEAL.] BENJ. F. HEGLER,
Clerk of the Supreme Court of the Territory of Oklahoma,
By M. E. KETSCH, *Deputy.*

[Endorsed:] 745. Supreme court of Oklahoma. Wm. C. Browning *et al. vs.* Chas. H. De Ford. Petition for appeal. Filed Feb'y 27, '99. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy.

803 In the Supreme Court of the United States.

WILLIAM C. BROWNING, EDWARD W. DEWEY, and FRANCIS KING, the Sole Surviving Partners Composing the Firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, Partners under the Firm Name and Style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a National Banking Corporation; The Bank of Topeka, a Corporation Organized under the Laws of the State of Kansas, and A. H. Vance, Plaintiffs in Error,

against

CHARLES H. DE FORD, Defendant in Error.

Assignment of Error on Appeal.

The plaintiffs in error in this action in connection with their appeal and as a part thereof make the following assignment of errors, which they aver occurred upon the trial of this cause, to wit:

First. The court erred in affirming the judgment of the court below.

Second. The court erred in affirming the action of the court below in the following divers sundry particulars, to wit, to which exceptions were duly preserved in the court below and presented to this court by case-made:

804 *a.* The court erred in receiving in evidence, over the objections of the plaintiffs in error, the certain writs of attachment and each of the same in the case of M. D. Wells & Company against W. F. Wolfe & Son; in the case of Burnham, Hanna, Munger & Company against W. F. Wolfe & Son; in the case of Sweet, Dempster & Company against W. F. Wolfe & Son; in the case of A. Frankenthal and others against W. F. Wolfe & Son; in the case of John V. Farwell & Company against W. F. Wolfe &

Son; in the case of Rice, Stix & Company against W. F. Wolfe & Son, and in the case of Moses Burn against W. F. Wolfe & Son, for the reason that said writs and each of them are void in law and inadmissible in evidence as against these plaintiffs in error.

b. The court erred in admitting in evidence certain letters and statements purporting to have been written by W. F. Wolfe & Son to various parties claiming to be their creditors, to wit, John V. Farwell & Company, John G. Miller & Company, Burnham, Hanna, Munger & Company, Rice, Stix & Company, A. Frankenthal and others, E. S. Jaffray & Company, and M. D. Wells & Company, in which the said W. F. Wolfe & Son purported to make statements concerning their financial standing, because said letters were wholly immaterial, and the said creditors, having elected to attach the property of their debtor, thereby waived any fraudulent and false representations made to them by such debtor.

c. That the verdict of the jury is not sustained by sufficient evidence.

d. That the verdict of the jury is contrary to law.

805 *e.* That the court erred in giving instruction numbered two to the jury on the trial of the case in the court below.

f. The court erred in giving instruction numbered three, upon its own motion, to the jury on the trial of the case in the court below.

g. The court erred in giving instruction numbered four, upon its own motion, to the jury on the trial of the case in the court below.

h. The court erred in giving instruction numbered five, upon its own motion, to the jury on the trial of the case in the court below.

i. The court erred in giving instruction numbered seven, upon its own motion, to the jury on the trial of the case in the court below.

j. The court erred in giving instruction numbered eight, upon its own motion, to the jury on the trial of the case in the court below.

k. The court erred in giving instruction numbered nine, upon its own motion, to the jury on the trial of the case in the court below.

l. The court erred in giving instruction numbered twelve, upon its own motion, to the jury on the trial of the case in the court below.

m. The court erred in giving instruction numbered thirteen, upon its own motion, to the jury on the trial of the case in the court below.

806 *n.* The court erred in giving instruction numbered fifteen, upon its own motion, to the jury on the trial of the case in the court below.

o. The court erred in giving instruction numbered sixteen, upon its own motion, to the jury on the trial of the case in the court below.

p. The court erred in giving instruction numbered seventeen,

upon its own motion, to the jury on the trial of the case in the court below.

q. The court erred in giving instruction numbered eighteen, upon its own motion, to the jury on the trial of the case in the court below.

r. The court erred in giving instruction numbered nineteen, upon its own motion, to the jury on the trial of the case in the court below.

s. The court erred in overruling the plaintiffs' motion for a new trial in the court below.

t. The court erred in rendering judgment on said verdict in favor of the defendant and against these plaintiffs in error and each of them.

All of which errors herein scheduled were committed by the trial court, to the manifest injury of the said plaintiffs and each and all of them, and each and all of said errors were by the supreme court of said Territory affirmed, and in respect to each and all of the same it is by the plaintiffs in error alleged that the supreme court of said Territory erred, to their manifest injury and prejudice.

807 Third. The plaintiffs in error allege that the court committed error in holding that the evidence in the court below was sufficient to justify the verdict of the jury.

Fourth. The court below erred in holding, as a principle of law, that where goods have been fraudulently obtained, by means of false representations as to the financial standing of the debtor, and where such creditors elect to sue for the purchase price of such goods and proceed by the attachment of the property claimed to belong to the debtor, that a party previously taking a mortgage on such goods to secure an antecedent debt with knowledge of such fraudulent representations must surrender such property to such attachment creditors.

Wherefore the plaintiffs in error pray that said order and judgment herein complained of be reversed.

(Signed) JOHN W. SHARTEL,
Attorney for Plaintiffs in Error.

[Endorsed:] No. 745. United States Supreme Court. Wm. C. Browning *et al. vs.* Chas. H. De Ford *et* —. Assignments of error on appeal. Filed Feb. 27, '99. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy. John W. Shartel, att'y for pl'ffs in error.

808 And be it further remembered that on the said 27th day of February, 1899, a certain order was made and entered in said cause in words and figures following, to wit:

809 In the Supreme Court of the Territory of Oklahoma.

WILLIAM C. BROWNING, EDWARD W. DEWEY, and FRANCIS KING, the Sole Surviving Partners Composing the Firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, Partners under the Firm Name and Style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a National Banking Corporation; The Bank of Topeka, a Corporation Organized under the Laws of the State of Kansas, and A. H. Vance, Plaintiffs in Error,

against

CHARLES H. DE FORD, Defendant in Error.

Order.

Now, on this 27th day of February, A. D. 1899, is presented to me, the undersigned, chief justice of the supreme court of the Territory of Oklahoma, the petition of the above-named plaintiffs in error on appeal, and also their petition for a writ of error; which said appeal and writ of error are respectively by me granted, and, the plaintiffs in error and appellants desiring that their writ of error shall operate as a supersedeas, it is by me ordered that said appeal and writ of error shall operate as a supersedeas upon the due execution of a supersedeas bond in form as provided by law, with sufficient sureties, within 20 days from this date, in the penal sum of one thousand dollars.

JNO. H. BURFORD,
Chief Justice of the Territory of Oklahoma.

[Endorsed:] 745. Supreme court of Oklahoma. Wm. C. Browning *et al. vs.* Chas. H. De Ford. Order. Filed Feb'y 27, '99. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy.

810 And be it further remembered that on the 27th day of February, 1899, there was filed in said cause in said court a citation, together with proof of service thereof; which citation and proof of service are in words and figures following, to wit:

811 THE UNITED STATES OF AMERICA, *Territory of Oklahoma*, } *ss*:

To Charles H. De Ford:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States of America, to be holden at the city of Washington, on, to wit, the 29th day of March, 1899, next, pursuant to an appeal filed in the office of the clerk of the supreme court of the Territory of Oklahoma, wherein William C. Browning, Edward W. Dewey, and Francis King, the sole surviving partners composing the firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Fran-

cis S. Dameron, partners under the firm name and style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a national banking corporation; The Bank of Topeka, a corporation organized under the laws of the State of Kansas, and A. H. Vance are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 27th day of February, in the year of our Lord one thousand eight hundred ninety-nine, and of the Independence of the United States of America the one hundred twenty-fourth.

[SEAL.] JNO. H. BURFORD,
Chief Justice of the Supreme Court of the Territory of Oklahoma.

Attest: BENJ. F. HEGLER,
Clerk of the Supreme Court of the Territory of Oklahoma,
By M. E. KETSCH, *Deputy.*

812 I hereby, on this 27 day of February, 1899, accept due personal service of this citation on behalf of Charles H. De Ford.

(Signed) COTTERAL & HORNER,
Attorneys for Appellee in said Cause.

[Endorsed:] No. 745. Supreme court of Oklahoma. Wm. C. Browning *et al. vs.* Chas. H. De Ford. Citation. Filed Feb. 27, '99. Benj. F. Hegler, clerk sup. ct., by M. E. Ketsch, deputy.

813 And be it further remembered that on the 10th day of March, 1899, there was filed in said cause a supersedeas bond; which said supersedeas bond is in words and figures following, to wit:

814 In the Supreme Court of the Territory of Oklahoma.

WILLIAM C. BROWNING, EDWARD W. DEWEY, and FRANCIS KING, the Sole Surviving Partners Composing the Firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, Partners under the Firm Name and Style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a National Banking Corporation; The Bank of Topeka, a Corporation Organized under the Laws of the State of Kansas, and A. H. Vance, Plaintiffs in Error,
against
CHARLES H. DE FORD, Defendant in Error.

Supersedeas Bond.

Know all men by these presents that we, William C. Browning, Edward W. Dewey, and Francis King, the sole surviving partners

composing the firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, partners under the firm name and style of Tootle, Wheeler & Motter; the Central National Bank of Topeka, Kansas, a national banking corporation; the Bank of Topeka, a corporation organized under the laws of the State of Kansas, and A. H. Vance, as principals, and M. L. Turner, as surety, are held and firmly bound unto the defendant in error, Charles H. De Ford, in the full and just sum of one thousand dollars ($1,000.00), to be paid to the said Charles H. De Ford, his representatives or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, successors, and administrators, jointly and severally,
815 by these presents.

Sealed with our seals and dated this 7th day of March, A. D. 1899.

The conditions of this obligation are as follows:

Whereas on the eleventh day of February, 1899, at a session of the supreme court of the Territory of Oklahoma, holden at the city of Guthrie, in said Territory, and in a suit pending in said court between the said William C. Browning, Edward W. Dewey, and Francis King, the sole surviving partners composing the firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, Joshua Motter, and Francis S. Dameron, partners under the firm name and style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a national banking corporation; The Bank of Topeka, a corporation organized under the laws of the State of Kansas, and A. H. Vance, as plaintiffs in error, and Charles H. De Ford, as defendant in error, there was a judgment rendered against the said plaintiffs in error and in favor of the defendant in error, affirming a certain judgment of the district court of the county of Logan and Territory of Oklahoma theretofore pending in said district court, wherein these plaintiffs in error were plaintiffs and said defendant in error was defendant, and assessing the costs of said action against the said plaintiffs in error, and said plaintiffs in error having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the said judgment of the said supreme court of the Territory of Oklahoma, and a citation directed to the said defendant in error, citing and admonishing him to be and appear at a session of the
816 Supreme Court of the United States of America, to be holden at the city of Washington, on the twenty-ninth day of March, 1899:

Now, the condition of the above obligation is such that if the said William C. Browning, Edward W. Dewey, and Francis King, the sole surviving partners composing the firm of Henry W. King & Company; Kate Tootle, William W. Wheeler, and Joshua Motter and Francis S. Dameron, partners under the firm name and style of Tootle, Wheeler & Motter; The Central National Bank of Topeka, Kansas, a national banking corporation; The Bank of Topeka, a corporation organized under the laws of the State of Kansas, and A. H. Vance, plaintiffs in error, shall prosecute said writ of error

to effect and answer all damages and costs, including interest, and all other charges or assessments adjudged against the said plaintiffs in error, if they fail to make said appeal good, then the above obligation to be void; else to remain in full force and effect.

(Signed) TOOTLE, WHEELER & MOTTER.
HENRY W. KING & CO.
BANK OF TOPEKA,
By J. R. MULVANE, *Pres't.*
CENTRAL NAT'L BANK OF TOPEKA,
By P. I. BONEBRAKE.

(Signed) J. R. MULVANE.
A. W. KNOWLES.
P. I. BONEBRAKE.
A. H. VANCE.
M. L. TURNER.

TERRITORY OF OKLAHOMA, } *ss:*
County of Oklahoma, }

M. L. Turner, being first duly sworn, on his oath deposes and says that he is a resident of the Territory of Oklahoma and a freeholder therein, and that he is worth the sum of more than three thousand dollars over and above all his debts, liabilities, and exemptions.

And further affiant saith not.

(Signed) M. L. TURNER.

Subscribed and sworn to before me this 7th day of March, A. D. 1899.

[Seal of Elizabeth Parsons, Notary Public, Oklahoma County, O. T.]

(Signed) ELIZABETH PARSONS,
Notary Public.

My commission expires Oct. 13, 1902.

[Endorsed:] (Copy.) Supreme court of Oklahoma. Henry W. King & Co. *et al. vs.* Chas. H. De Ford. Supersedeas bond. Approved March 10th, 1899. Jno. H. Burford, chief justice. Filed March 10, 1899. Benj. F. Hegler, clerk sup. ct.

817 UNITED STATES OF AMERICA, } *ss:*
Territory of Oklahoma, }

I, Benjamin F. Hegler, the duly appointed, qualified, and acting clerk of the supreme court of the Territory of Oklahoma, do hereby certify that the above and foregoing is a full, true, and complete transcript of the certain record described in the foregoing appeal and writ of error.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 25th day of March, A. D. 1899.

[Seal Supreme Court, Territory of Oklahoma.]

BENJ. F. HEGLER,
Clerk of the Supreme Court of the Territory of Oklahoma.

818 In the Supreme Court of the United States.

WILLIAM C. BROWNING and Others, Plaintiffs in Error,
against
CHARLES H. DE FORD, Defendant in Error. } # 17342.

It is hereby agreed and stipulated by and between the plaintiff and defendant in error that the itemized details of the inventory between pages 15 and 107, inclusive, may be omitted from the printed record and a statement inserted in lieu thereof that "the items of this inventory, no point being made thereon by either party, are too voluminous to be inserted herein, and footings alone are given. The inventory of the stock so made by W. L. Harvey, at Oklahoma city, in the Territory of Oklahoma, foots the sum of nine thousand five hundred twenty-one and $\frac{53}{100}$ dollars ($9,521.53), and the said inventory of the stock of merchandise at Guthrie, so made by W. L. Harvey, foots the sum of fourteen thousand two hundred fifty dollars ($14,250.00)." It is also stipulated and agreed that the detailed inventory between pages 292 and 353, inclusive, attached to the return of the sheriff on a certain order of sale issued in the cases of E. F. Jaffray & Company, M. D. Wells & Company, Rice, Stix & Company, B. Frankenthal & Brothers, Sweet, Dempster & Company, John V. Farwell & Company, and Burnham, Hanna, Munger & Company against W. F. Wolfe and L. H. Wolfe,
819 partners as W. F. Wolfe & Son, defendants, under mark of "Exhibit A," may *may* be omitted and the substance of said schedule inserted—that is, to wit, "that the total footing of the said inventory made by the said C. H. De Ford of said stock of goods at Oklahoma city, aforesaid, is the sum of seven thousand one hundred sixty dollars and fifty-eight cents ($7,160.58)."

JOHN W. SHARTEL,
Attorney for Plaintiffs in Error.
JAMES R. KEATON AND
COTTERAL & HORNOR,
Attorneys for Defendant in Error.

[Endorsed:] United States Supreme Court. W. C. Browning *et al. vs.* Charles H. De Ford. Stipulation.

820 [Endorsed:] File No., 17,342. Supreme Court U. S., October term, 1899. Term No., 245. Wm. C. Browning *et al.*, P. E. & app'ts, *vs.* Charles H. De Ford. Stipulation to omit certain portions of the record in printing. Filed August 29, 1899.

Endorsed on cover: File No., 17,342. Oklahoma Territory supreme court. Term No., 245. William C. Browning, Edward Dewey, & Francis King, the sole surviving partners composing the firm of Henry W. King & Company, *et al.*, plaintiffs in error & appellants, *vs* Charles H. De Ford. Filed April 1st, 1899.

IN THE SUPREME COURT OF THE UNITED STATES.

WILLIAM C. BROWNING, EDWARD DEWEY, and Francis King, the Sole Surviving Partners Composing the Firm of Henry W. King & Company *et al.*, Plaintiffs in Error and Appellants, *vs.* CHARLES DE FORD.	October Term, 1899. # 245.

In error to and appeal from the supreme court of the Territory of Oklahoma.

Stipulation.

Whereas it appears from the printed record in said cause and from the transcript on file therein that the opinion in the court below is not annexed—

It is hereby stipulated that plaintiffs in error and appellants may file in said cause a duly certified copy of such opinion with like *effect* as though contained in the original transcript, and may file twenty-five printed copies thereof for the use of the court and of counsel with like *effect* as though contained in the printed record in said cause.

JOHN W. SHARTEL,
Attorney for Plaintiffs in Error and Appellants.
JAMES R. KEATON AND
COTTERAL & HORNOR,
Attorneys for Appellee.

In the Supreme Court of the Territory of Oklahoma, January Term, 1899.

W. C. BROWNING ET AL., Plaintiffs in Error, *vs.* CHAS. H. DE FORD, Defendant in Error.	No. 745.

Syllabus.

I. Fraudulent conveyances—antecedent creditors.—An antecedent creditor who knows that his debtor procured goods and merchandise by fraudulent means cannot by a chattel mortgage secure a lien on such fraudulently procured goods adverse to the innocent vendors of such goods.

II. Fraud of grantee.—An antecedent creditor who knows that his debtor has procured goods and merchandise by fraudulent means, and when the sale of such goods is partially induced by his own fraud, deceit, and misrepresentation as to the credit of his debtor, cannot by a chattel mortgage secure a

lien on such fraudulently procured goods adverse to the innocent vendor.

III. *Bona fide* purchasers—who are not.—The protection of a purchaser of goods from a fraudulent vendee is based upon and he is recognized as a *bona fide* purchaser upon the ground only that the fraudulent purchaser has a voidable or defeasible title which, before its annulment by the vendor, the defrauding purchaser can transmit to a *bona fide* purchaser, who is without knowledge or notice of the fraud, and who has parted with value therefor; but one who buys with notice or knowledge of the fraud of his vendor in obtaining the property is not a *bona fide* purchaser and is liable, not only to lose the goods, but, if he has parted with them, he is liable to pay their value.

IV. Goods fraudulently obtained—mortgage of, when void.—A mortgage of goods fraudulently obtained is absolutely void if the mortgagee participated in the fraud by which they were obtained or before the making of the mortgage had knowledge that the mortgagor had fraudulently obtained the same. Where in an action by mortgagees against a sheriff to recover the value of the mortgaged property seized under attachments against the mortgagor in suits by his creditors the defendant establishes the fact that such goods were fraudulently obtained from the attachment creditors by the mortgagor, and that the mortgagees participated in the fraud by which such goods were obtained or before the making of the mortgage had knowledge that such goods were so fraudulently obtained, the fraudulent character of the mortgage and its invalidity is established.

Error from the district court of Logan county.

Before Frank Dale, trial judge.

Affirmed.

Action by Henry W. King & Co., Tootle, Wheeler & Motter, Central National Bank of Topeka, Kansas, The Bank of Topeka, and A. H. Vance, as mortgagees, against Charles H. De Ford, sheriff of Oklahoma county, to recover the value of a stock of goods seized by said De Ford and sold under writs of attachment issued against the property of the firm of W. F. Wolfe & Son, in suits instituted by general creditors of said firm. From a judgment for the defendant, plaintiffs appeal. Affirmed.

John W. Shartel, for plaintiffs in error.
Cotteral & Hornor and Joseph Wisby, for defendant in error.

TARSNEY, *J.*:

On December 15, 1890, the plaintiffs in error took from W. F. Wolfe & Son a chattel mortgage upon a stock of goods and merchandise situated in Oklahoma city, and went into immediate possession of the same by one W. L. Harvey, as their agent. The

mortgage was obtained by A. H. Vance, one of the plaintiffs in error, acting for himself and as agent and attorney for all the other plaintiffs in error, and the property, being placed in his possession by Wolfe & Son, was by him turned over to W. L. Harvey, who was his brother-in-law, to sell and dispose of for said plaintiffs in error. On the same day certain of the creditors of Wolfe & Son commenced attachment proceedings and caused writs of attachment to be levied on the mortgaged property. Defendant De Ford, as sheriff of Oklahoma county, levied the attachments, dispossessed the agent of the mortgagees, and the property was afterwards sold by the defendant under an order of sale from the district court made in the attachment proceedings. The mortgagees each brought a separate suit against the defendant for the conversion of the property, and on June 29, 1891, a stipulation was made whereby the several suits of the plaintiffs in error should be consolidated into one action, wherein the plaintiffs in error should be plaintiffs, and, in accordance with such stipulation, said several actions were consolidated by order of court, and a consolidated petition was filed therein alleging a separate indebtedness due to the several plaintiffs from W. F. Wolfe & Son, the making of a chattel mortgage by Wolfe & Son to secure the same, the delivery of the mortgaged property thereunder to the agent of the plaintiffs, its seizure and conversion by the defendant, and asking judgment for the value of the several interests of the plaintiffs in the property converted.

To this petition the defendant De Ford answered, justifying the seizure of the goods under various writs of attachment placed in his hands for service.

The principal ground of defense relied upon by the defendant was stated in the 6th paragraph of the answer, in which he alleged substantially that in the year 1890 and prior thereto W. F. Wolfe, Louis H. Wolfe, and Frederick W. Wolfe were engaged in mercantile business in Topeka, Kansas, as partners under the firm name of W. F. Wolfe & Sons; that prior to said date plaintiffs, pretending to be creditors of said firm, had taken notes of said firm for the amount of their indebtedness claimed in this action; that some of said notes were signed by D. A. Harvey, others by John T. Clark, and all of said notes were signed by plaintiff A. H. Vance; that Clark, Harvey, and Vance signed said notes as sureties thereon; that A. H. Vance is a brother-in-law of Louis H. Wolfe, Harvey is an uncle of said Wolfe, and Clark is the father-in-law of said Wolfe; that the stock in trade of said Wolfe & Sons at Topeka consisted of remnants and broken lots of merchandise, odds and ends of a run-down stock, of small commercial value; that it was the wreckage of a former failure of said Wolfe & Sons; that at said time Wolfe & Sons were utterly insolvent and known to be so by all the plaintiffs; that, having no means to pay the indebtedness on said notes and knowing that if the same should be paid it would have to be paid by Vance, Harvey, and Clark, Wolfe & Sons combined, conspired, and confederated with Vance, Harvey, and Clark and formed and entered into a scheme and combination with said Harvey, Vance, and Clark for the purpose of protecting and relieving

them from their surety obligations on said notes; that, pursuant to said conspiracy, Wolfe & Sons removed their business from Topeka to Oklahoma Territory and there opened under the name of W. F. Wolfe & Son; that W. F. Wolfe was the owner of real estate in Topeka of the value of $10,000, which he conveyed to the wife of A. H. Vance, so that the same should be beyond the reach of creditors; that L. H. Wolfe was the owner of certain real estate in Topeka of the value of $10,000, which he conveyed to his wife for the purpose of placing it beyond the reach of creditors; that when said firm moved to Oklahoma city L. H. Wolfe became the owner of real estate at Oklahoma city of the value of $12,000, which he conveyed to Georgiana H. Wolfe, his mother; that the deeds for said several pieces of real estate were withheld from record, so that the title thereof of record stood in the names of W. F. Wolfe and L. H. Wolfe, for the purpose of enabling them to carry out and consummate the conspiracy aforesaid, whereby they could use such real estate as a basis of credit upon which to obtain goods and merchandise from wholesale merchants, which goods and merchandise, when so obtained, should be conveyed by mortgage to the holders of said outstanding notes, and which, being appropriated to the payment of said notes, would release the said relatives of said Wolfe & Sons, viz., Harvey, Vance, & Clark, from their obligations as sureties on said notes, *from* which obligations they were financially responsible; that in pursuance of said plan and scheme, Wolfe & Son, after they opened business in Oklahoma city, made property statements to divers wholesale merchants, including the attachment plaintiffs, for the purpose of obtaining credit, which property statement was as follows: "Stock in Oklahoma city, $17,000; Guthrie stock, $35,000; real estate in Oklahoma city, $12,000; Topeka real estate, $20,000; making total firm assets, $84,000; total liabilities, $27,000;" that it was a part of said plan and conspiracy that when a large stock of goods had been purchased by them by means of said false and fraudulent statement the deeds to said real estate, which had previously been made to Mrs. A. H. Vance, Mrs. L. H. Wolfe, and Georgiana H. Wolfe, and which had remained unrecorded for three years and a half, for eight months, and for six months respectively, should be placed upon record, and the goods and merchandise obtained upon such false and fraudulent property statement should be conveyed by mortgage to the plaintiffs in error in satisfaction of said notes; that said Wolfe & Son, in pursuance of such conspiracy and by means of said false and fraudulent property statement, did purchase and obtain credit for $19,000 worth of goods from said attaching creditors and others; that immediately upon obtaining such goods and credits the real-estate deeds aforesaid were placed upon record, and the chattel mortgage under which plaintiffs in error claimed was executed, and the goods so fraudulently purchased delivered to them under such chattel mortgage. Defendant alleged that said goods were so fraudulently obtained from said attachment creditors; that A. H. Vance, one of the plaintiffs in error, acting for himself and as agent and attorney for the other plaintiffs in error, not only had full knowledge that such goods

were wrongfully and fraudulently obtained from said attachment creditors, but that he actively participated in obtaining the same; that he had full knowledge that the mortgage under which plaintiffs in error claimed was executed by Wolfe & Son, with the intent and for the purpose of defrauding, hindering, and delaying the creditors of said Wolfe & Son, and that he actively participated in such fraudulent conveyance to assist said Wolfe & Son in such fraudulent purpose.

The evidence in this case tended to establish the facts set up in defendant's answer. Another case arising out of this transaction was before this court at the June term, 1896, and in that case—Jaffray *et al. vs.* Wolfe *et al.*, 4 Okla., 303—the evidence and facts as shown by this record *was* fully considered by the court, and it was there held that the chattel mortgage under which the plaintiffs in error claim was fraudulent and void as against the attaching creditors.

In that case Jaffray and others sued Wolfe & Son and attached the property covered by the mortgage in question after the execution of the mortgage and the delivery of the goods thereunder to the mortgagees. On the question of sustaining the attachments on the ground that the mortgage in question was fraudulent and void as to creditors and made with the purpose of defrauding creditors, in which fraudulent purpose the mortgagees participated, the trial court sustained the demurrer to the evidence offered by the attaching creditors, which evidence was substantially the same as that presented by the defendant in this case. Upon review in this court the decision of the trial court was reversed, and it was held that the evidence abundantly established the fraudulent character of the conveyance and the participation of the mortgagees therein.

In this case counsel for plaintiffs in error contend that the evidence did not warrant the court in submitting to the jury for finding nor warrant the jury in finding either that the plaintiffs had any knowledge of the fraudulent procurement of the goods from the attaching creditors or of any fraudulent intent on the part of Wolfe & Son in executing to the plaintiffs the chattel mortgage, and that if the evidence otherwise fairly presented the hypothesis with respect to the fraudulent procurement of the goods from the attaching creditors, and sufficiently raised the question of knowledge of such fraud on the part of the plaintiffs at the time of taking the mortgage, the entire treatment of the subject by the court is erroneous under the law.

In support of this proposition, counsel contend that while defrauded creditors have either of two remedies which they may pursue, such remedies are not concurrent; that if their goods have been fraudulently obtained they may approve the sale, bring action upon the contract, and attach the debtor's property, or they may elect to disapprove the sale and sue to recover their property back, but that the two remedies cannot be prosecuted at one and the same time, nor can the joint result of these two methods of procedure be realized in one action; that the actions of the attaching creditors in this case were each based upon a contract of sale, and confirmed that contract,

and waived all fraud involved in it so far as the rights of the mortgage purchasers are concerned; that the sole inquiry should have been as to whether the disposition of the property made by the firm of W. F. Wolfe & Son to the mortgage creditors was in and of itself *bona fide* or fraudulent.

The soundness of these propositions, as abstract propositions of law, will, in the main, not be questioned. The vice of the contention lies in the attempt to apply these propositions of law to the facts of this case. The defendant representing the defrauded creditors has not attempted to assert these two remedies as cumulative or concurrently in one proceeding. He has not asserted title to the goods, as remaining in the defrauded creditors, and sought to recover the goods back. He has attacked the *bona fides* of the purchase of the goods from the attaching creditors and the *bona fides* of their conveyance to the mortgagees. He asserts that no title to the property, other than a voidable or defeasible title, passed from the attaching creditors to the mortgagors, and that such title being voidable and defeasible, no title thereto would pass to the mortgagees unless they were *bona fide* mortgagees—that is, unless they took the mortgage for value and without notice that the mortgagors had acquired the goods fraudulently, or with the intent to so acquire them, and to convey them by mortgage for the purpose of defrauding the persons from whom they had acquired them. He asserts that no title to the property sought to be conveyed by the mortgage passed to the mortgagees, for the reason that the conveyance was made by the mortgagors with the intent and purpose of defrauding their creditors; that such purpose was participated in by the mortgagees or that they had actual knowledge that the goods were fraudulently obtained and of the fraudulent purpose of the mortgagors in conveying them; that therefore the title to the goods never passed to them; that it remained in the mortgagors and that the property was subject to seizure under attachment against the mortgagors at the suit of creditors.

The evidence of the goods having been fraudulently obtained from the attaching creditors by Wolfe & Son was not presented for the purpose of showing by that fact alone a right in the attaching creditors either to recover back such goods or to seize any goods of the mortgagees and appropriate them to the payment of any debts due the attaching creditors; that goods were fraudulently obtained from the attaching creditors was neither pleaded nor proven by the defendant for the purpose of establishing, independently therefrom, a right of recovery or as in itself absolutely establishing a defense, but was pleaded and proven as a probative fact, tending to establish the real fact in issue, viz., whether the mortgage under which the plaintiffs were claiming was fraudulent and void as to creditors. This theory of the defendant, if supported by the evidence, was a correct theory of the law of the case. The defendant introduced evidence to establish the fact that long prior to any goods being obtained by the mortgagors from the attaching creditors a systematic plan and scheme for the payment of the indebtedness specified in the chattel mortgage and for the releasing of Harvey,

Vance, and Clark from their liability as securities therefor was devised and agreed upon by the several members of the Wolfe family, including A. H. Vance; that in pursuance of said scheme and all looking to the final consummation thereof, Wolfe & Son conveyed their real property in Topeka to their female relatives, including the wife of Vance; that such conveyances were kept from record, and the record title was permitted to remain in W. F. Wolfe and L. H. Wolfe; that the Oklahoma City real estate was conveyed away in like manner and the deed kept from record, thus enabling Wolfe & Son to falsely and fraudulently represent to merchants that their financial standing was good, and that they were the owners of large quantities of valuable real estate; that by means of this very representation they were enabled to fraudulently obtain from the attaching creditors in this case the goods in controversy, for which they never paid and never intended to pay; that by this plan and scheme, when Wolfe & Son had thus fraudulently obtained the property of others, sufficient to pay off these mortgage debts, they executed a mortgage upon such property for such purpose; that such plan and scheme was actually consummated in all its details; that showing the direct participation of Vance in the fraudulent transaction and showing that every part and detail of it was but part and detail of one transaction, fraudulent from its inception to its consummation, defendant established not only the fraudulent character of the mortgage as to Wolfe & Son by showing their intent and purpose thereby to hinder, delay, and defraud their creditors, but also its fraudulent character as affecting the mortgagees by establishing the direct participation of Vance in the fraudulent obtaining of the goods, by his aiding in concealing the true title of the real estate upon the credit of which they were purchased, and his knowledge of such fraudulent purchase, and his knowledge of the fraudulent purposes of the mortgagors in executing the mortgage, and showing that the other mortgagees were bound thereby by reason of said Vance acting as their agent and attorney, and participating in such fraud for their benefit.

It was upon this theory that the defense was presented. This was one of the theories upon which the case was submitted by the court to the jury. It was upon the evidence of these probative facts that the jury found that the mortgage was fraudulent and void, and did not have the effect of conveying the property to the plaintiffs in error. It was the province of the jury to weigh the evidence and determine the ultimate fact. There being evidence to support their finding upon this theory of the case, we would have no right to disturb their verdict, although we might entertain views as to the sufficiency of the evidence differing from those entertained by the jury; but in this case we are satisfied that the verdict is fully supported by the weight of the evidence.

II. The instructions of the court fairly presented the law of the case to the jury. They are not subject to the criticism made by counsel for plaintiffs in error. The particular instruction objected to was as follows:

"In order to invalidate the chattel mortgage, it is not enough for the defendant to show simply that the firm of W. F. Wolfe & Son fraudulently purchased goods of the attaching creditors, but it must also appear from the evidence that the plaintiffs in this case were parties to such fraud; that they were either active participants in such fraud, or that they aided or abetted in such fraud, or that said plaintiffs, at the time they took said mortgage, actually knew that Wolfe & Son had fraudulently incurred a liability and debt for the goods or a portion thereof described in the chattel mortgage."

A party is not compelled to rely upon one particular theory of law applicable to a case for his recovery or defense, but is entitled to have submitted by proper instructions every theory of the law applicable to the pleadings and proof under which his cause of action or defense might be sustained. If the goods in controversy were fraudulently purchased and obtained by Wolfe & Son from the attaching creditors, and if the mortgagees participated in such fraudulent purchase, or if they had knowledge that the goods were so fraudulently obtained, they could not obtain a *bona fide* conveyance of such goods to themselves. Hence, to invalidate the mortgage, it was only necessary for the defendant to show that the goods were fraudulently obtained by the mortgagor; that the mortgagees were participants in such fraud or had knowledge thereof, and therefore the instruction of the court complained of was a correct enunciation of the law applicable to the case. One who has been induced by false representations to sell and part with the possession of his goods has more than two remedies under the law: (1) Treating the title of the fraudulent purchaser as voidable and defeasible, he may rescind the contract and recover his goods back; (2) he may waive the tort, affirm the contract, and bring an action to recover the value of the goods or an action to recover damages for the deceit; (3) where the fraud consists in inducing by false representations a sale of goods to an insolvent third person, from whom the misrepresenting party afterward obtains them, the seller may bring suit for the price against the latter party, as though he had bought the goods in his own name (1 Benj. Sales, 4 ed., sec. 491; 2 Schouler Pers. Prop. (2 ed.), sec. 612). Upon this latter principle and upon the evidence that Vance, acting for himself and the other plaintiffs in error, by withholding from record the conveyances from Wolfe & Son of all their real estate, thereby participated in falsely representing to the attaching creditors that Wolfe & Son at the time of the purchase of the goods were the owners of said real estate, fraudulently induced the attaching creditors to part with goods which plaintiffs in error afterwards obtained, the attaching creditors might have brought their action for the value of said goods against the plaintiffs in error by attachment and have recovered.

The protection of a *bona fide* purchaser from a fraudulent vendee is almost universally recognized by the courts of this country on the ground only that the fraudulent purchaser has a voidable or defeasible title which before its annulment by the vendor the defrauding purchaser can transmit to a *bona fide* purchaser, who is

without knowledge or notice of the fraud, and who has parted with value therefor. One who buys with notice or knowledge of the fraud of his vendor in obtaining the property is not a *bona fide* purchaser, and is liable not only to lose the goods, but, if he has parted with them, he is liable to pay their value (Sterns *vs.* Gage, 79 N. Y., 102).

An antecedent creditor who knows that his debtor procured goods and merchandise by fraudulent means cannot by a chattel mortgage secure a lien on such fraudulently procured goods adverse to the innocent vendors of such goods (Wafer *vs.* Harvey Co. Bank (Kans.), 26 Pac., 1032).

The promotion of injustice and the securing of success for fraudulent and deceitful practices would be the purpose of the law if an antecedent creditor, who knows that his debtor has procured goods and merchandise by fraudulent means, and when the sale of such goods is partially induced by his own fraud, deceit, and misrepresentations as to the credit of his debtor, could by a chattel mortgage secure a lien on such fraudulently procured goods adverse to the innocent vendor.

We think the law of this case was fairly stated by the court to the jury, and find no error in the record that would warrant our disturbing the verdict of the jury or the judgment of the court.

The judgment is affirmed, all the judges concurring.

UNITED STATES OF AMERICA, *Territory of Oklahoma*, } *ss:*

In the Supreme Court.

I, Benj. F. Hegler, clerk of the supreme court of the Territory of Oklahoma, do hereby certify that the above and foregoing is a full, true, and complete copy of the opinion of said court in the cause of Browning *et al. vs.* De Ford; No. 745, filed in said court on the 11th day of February, 1899, and now of record and on file in my office.

In witness whereof I hereto set my hand and affix the seal of said court, at Guthrie, this 22d day of February, 1899.

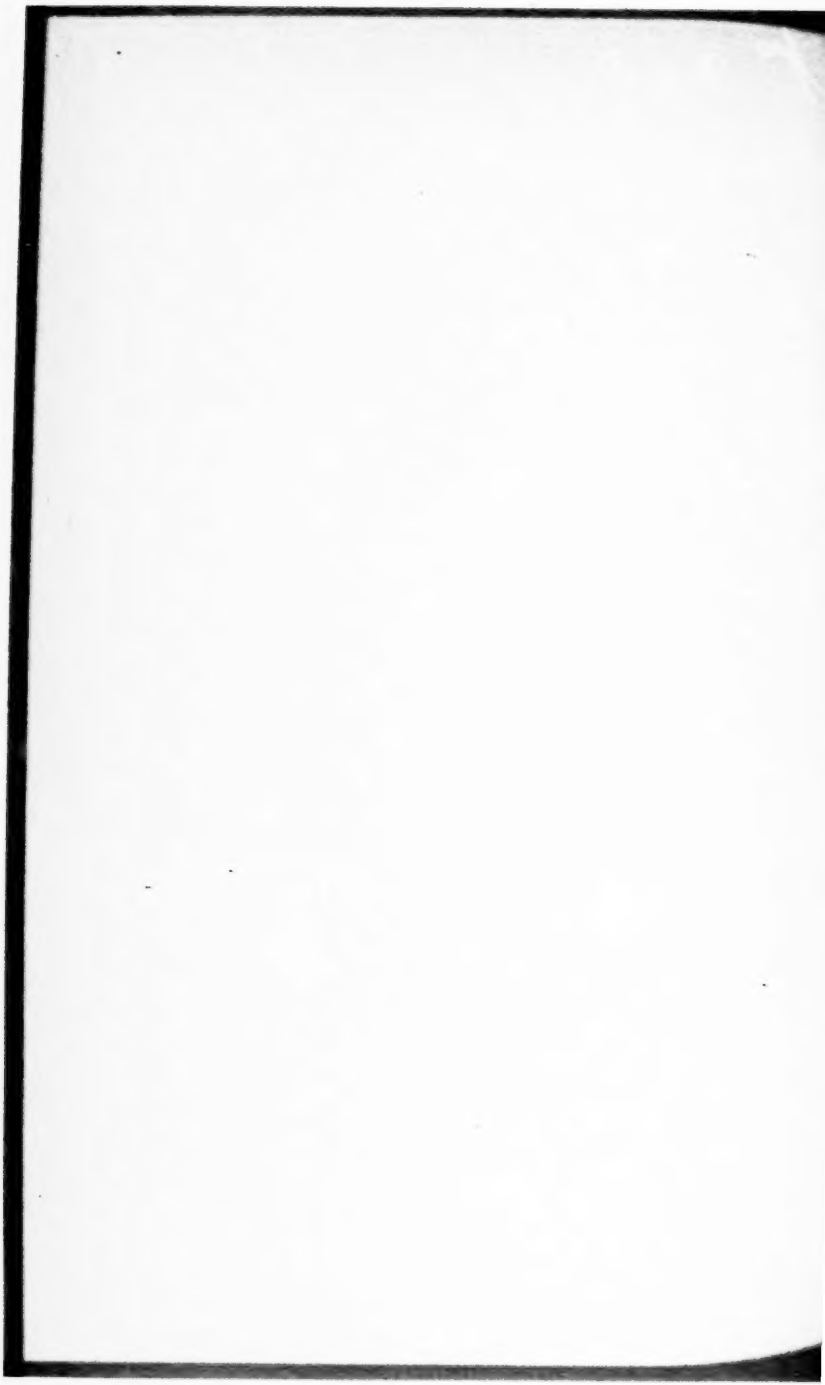
[Seal Supreme Court, Territory of Oklahoma.]

BENJ. F. HEGLER,
Clerk Supreme Court.

Fee, $5.25.

[Ten-cent U. S. internal-revenue stamp, canceled Feb'y 22, 1899. B. F. H.]

[Endorsed:] File No., 17,342. Supreme Court U. S., October term, 1899. Term No., 245. Wm. C. Browning *et al.*, P. E. & app't-, *vs.* Chas. H. De Ford & *al.* Stipulation & addition to record. Filed January 8th, 1900.



No. 245.

Brief of Plaintiffs in Error

SUPREME COURT, U. S.
FILED
APR 5 1900
CLERK.

Filed April 5, 1900.

In the Supreme Court of the United States of America.

WILLIAM C. BROWNING, EDWARD W. DEWEY AND FRANCIS KING, the sole surviving partners composing the firm of Henry W. King & Co.; KATE TOOTLE, WILLIAM W. WHEELER, JOSHUA MOTTER AND FRANCIS S. DARRON, partners under the firm name of Tootle, Wheeler & Motter; THE CENTRAL NATIONAL BANK, of Topeka, Kansas, a national banking corporation; THE BANK OF TOPEKA, a corporation organized under the laws of the State of Kansas, and A. H. VANOE,

Plaintiffs in Error.

against

CHARLES H. DE FORD, *Defendant in Error.*

BRIEF OF PLAINTIFFS IN ERROR.

Respectfully submitted,

JOHN W. SHARTEL,

Attorney for Plaintiffs in Error.

In the Supreme Court of the United States of America.

WILLIAM C. BROWNING, EDWARD W. DEWEY AND FRANCIS KING, the sole surviving partners composing the firm of Henry W. King & Co.; KATE TOOTLE, WILLIAM W. WHEELER, JOSHUA MOTTER AND FRANCIS S. DAMERON, partners under the firm name of Tootle, Wheeler & Motter; THE CENTRAL NATIONAL BANK, of Topeka, Kansas, a national banking corporation; THE BANK OF TOPEKA, a corporation organized under the laws of the State of Kansas, and A. H. VANCE,

Plaintiffs in Error.

against

CHARLES H. DE FORD, *Defendant in Error.*

BRIEF OF PLAINTIFFS IN ERROR.

STATEMENT OF FACTS.

On the fifteenth day of December, 1890, the firm of William F. Wolf & Son were engaged in the business of retail merchants and operating a store at Oklahoma City and one at Guthrie, in the Territory of Oklahoma.

On that date they executed a joint chattel mortgage to A. H. Vance, D. A. Harvey, J. A. Clark, the Bank of Topeka, of Topeka, Kansas, the Central National Bank of Topeka, Kansas, Henry W. King & Co., of Chicago, Illinois, and Tootle, Hosea & Company (now Tootle, Wheeler & Motter) of St. Joseph, Missouri, in the sum of $22,048.54, which said chattel mortgage reads as follows (see printed record, page 21):

"KNOW ALL MEN BY THESE PRESENTS, that we, W. F. Wolfe & Son, parties of the first part, are indebted to A. H. Vance, D. A. Harvey, and J. A. Clark, the Bank of Topeka, Topeka, Kansas, the Central National Bank of Topeka, Kansas, Henry W. King & Co., of Chicago, Ills., Tootle, Hosea & Co., St. Joseph, Mo., parties of the second part, in the sum of $22,048.54, with interest on said sum as follows: $2,100 on note due Bank of Topeka, Topeka, Kansas, Jany. 28, 1891, with interest at ten per cent from maturity; $2,000 on note due Bank of Topeka, Topeka, Kansas, Nov. 22, 1890, with interest at ten per cent from the said date; $1,000 on note due bank of Topeka, Topeka, Kansas, December 15, 1890, with interest at ten per cent from said date; $5,000 on note due Bank of Topeka, Topeka, Kansas, Feby. 20, 1891, with interest at ten per cent from maturity; $1000 on note due Central National Bank, of Topeka, Kansas, Jany. 14, 1891, with ten per cent interest after maturity; $1,000 on note due Central National Bank of Topeka, Kansas, Dec. 15, 1890, with interest at ten per cent from said date; $1,000 on note due A. H. Vance, of Topeka, Kansas; $600 on note due A. H. Vance of Topeka, Kansas; $300 on note due A. H. Vance, of Topeka, Kansas, which, with interest, amounts at the present time to $2,300.00, $1,048.54 being the amount due Henry W. King & Co., of Chicago, Ills., as shown by two notes with interest on said amount from April 11, 1890, at 8 per cent interest; $1,000 balance on note

due November third, 1890, to Tootle, Hosea & Co., of St. Joseph, Mo. with interest at 9 per cent. from April 9. 1890; $2,800 due December 3, 1890, to Tootle Hosea & Co., of St. Joseph, Mo., with interest at 9 per cent from April 9, 1890; $2,800 due Jany. 3, 1890, to Tootle, Hosea & Co., of St. Joseph, Mo., with interest at 9 per cent from April 9, 1890. All of the above being promissory notes made by W. F. Wolfe and Lewis H. Wolfe, being the firm of W. F. Wolfe & Son, to the Bank of Topeka, State of Kansas; Central National Bank of the City of Topeka, State of Kansas, Henry W. King & Co., of Chicago, State of Illinois, and Tootle, Hosea & Co., of St. Joseph, State of Missouri.

"All of which notes except those made to him are signed by the said A. H. Vance as security; all of which said notes except those made to A. H. Vance and Henry W. King & Co., are signed by D. A. Harvey as security, and the note for $5000 to the Bank of Topeka is signed by J. T. Clark, as security; and this mortgage is made for the benefit of said banks and persons above named to cover said notes and all and any renewals of same, and to secure the payment of said money and protect said sureties from loss thereof.

"NOW, THEREFORE, in consideration of said indebtedness and to secure the payment of the sum as aforesaid, said parties of the first part do hereby sell, assign, transfer and set over to said parties of the second part the property owned entirely by them and without any encumbrance, and described in the following schedule, viz:

"The entire stock of dry goods, clothing, hats, caps, boots, and shoes, notions and gentlemens furnishing goods of said first parties now contained in the store building occupied by them and situated on the S. W. corner of Harrison Avenue and Division Streets, in the city of Guthrie, Oklahoma Territory, and also the entire stock of dry goods, clothing, hats, caps, boots and shoes, notions and gents furnishing goods of said first party now contained in the store building occupied by them,

and situated and described as follows: No. 220 and 222 Main Street, Oklahoma City, Oklahoma Territory, it being the true intent and meaning of the parties hereof to include and cover herein all goods, wares and merchandise of whatever kind and nature now contained in each of the said store buildings. Also all fixtures and furniture in each of the said store buildings.

"Provided, however, that if said debt and interest be paid as above specified this sale and transfer shall be void, otherwise to be in full force and effect.

"The possession of the said above described property is hereby surrendered to the said parties of the second part and the said parties of the second part shall sell the same at public or private sale with or without notice, and after satisfying the aforesaid debt and interest thereon and necessary and reasonable costs, charges and expenses incurred, out of the proceeds of sale, they shall return the surplus to the parties of the first part or their legal representatives, and if from any cause said property shall fail to satisfy said debt and interest as aforesaid, the said parties of the first part hereby agree to pay the deficiency.

"In witness whereof the said parties of the first part hereunto set their hands this fifteenth day of December, 1890.

"(Signed). W. F. WOLFE & SON.

"Witness signature, HARPER S. CUNNINGHAM.

"This instrument executed in duplicate.

(Endorsement). "Filed December 15th, at 8:45, 1890.

"LEWIS H. LAWS, County Clerk.

"Recorded December 30th, 1890, in Mort. record No. 1, pp. 127 and 128. Lewis H. Laws, County Clerk."

The mortgagees immediately took possession of the mortgaged property by W. L. Harvey, their agent, who at once proceeded to inventory the goods mortgaged (see inventories, pp. 15 to 107, inclusive, of the record). Shortly after the execution of the mortgage certain of the other creditors instituted attachment proceedings against W. F. Wolfe & Son and caused their writs of attachment to be levied on the mortgaged property, and the defendant, DeFord, as sheriff of Oklahoma county, and L. T. Shockey, as sheriff of Logan county, levied the attachments on the two stocks of goods, dispossessed the mortgagees, and the mortgagees each brought their several suits for the conversion of the property against both sheriffs.

On the 29th day of June, 1891, the parties entered into a stipulation (see record page 15), consolidating all of the suits into two cases, in one of which all of the mortgage creditors should appear on the record as plaintiffs and the sheriff of Oklahoma county should appear in one suit as defendant with respect to the stock of goods located in that county, and in the other of which suits the sheriff of Logan county should be the defendant.

And thereupon the plaintiffs in this action against Charles H. DeFord filed in accordance with the stipulation and the order of court, a consolidated complaint (see record, pp. 17 to 23 inclusive). To this complaint, the defendant, DeFord, filed his answer, seeking to justify the seizure of the goods under various writs of attachment

placed in his hands for service, and alleging in the first count of his answer that the indebtedness of each of the attachment plaintiffs was procured by W. F. Wolfe & Son by means of false and fraudulent representations as to their financial standing and credit, and that the indebtedness of the mortgage plaintiffs is fictitious and trumped up, and that the mortgage executed to the plaintiffs is not *bona fide*.

In another count the claim is made that the mortgagees, by reason of not bringing their suit for three months after the attachments were levied, and having full knowledge of the seizure of the property, waived their rights under section 4905 of article 40, entitled "Replevin," of the statutes of Oklahoma of 1890.

Another count of the answer states that the firm of William F. Wolfe & Son, which incurred the indebtedness to the mortgage plaintiffs, if any, was a different firm, being composed of William F. Wolfe, Louis H. Wolfe and Frederick W. Wolfe, and that the firm at Oklahoma City and Guthrie was composed only of William F. Wolfe and Louis H. Wolfe, and claiming that the new firm could not mortgage its assets to the prejudice of new creditors to creditors of the old firm.

Another count of the answer alleges that the mortgages were made to avoid the insolvent assignment laws, and was, in effect, an attempt to make a general assignment.

Other counts are contained in the answer making various allegations of fraud in the excution and delivery of the chattel mortgage.

The case was tried in the district court of Logan county to a jury, which returned a verdict in favor of the defendant. A motion for a new trial was filed, which was by the court overruled. The supreme court of the territory affirmed the judgment of the court below, and the opinion of the court was omitted from the original transcript since cretified here on stipulation and printed separately.

The case was tried upon two theories upon the part of the defendant sheriff and upon the part of the court. One of these theories is that if the firm of W. F. Wolfe & Son executed and delivered a chattel mortgage with intent to hinder, delay or defraud their creditors and the mortgagees took with knowledge of such intent, the mortgages would be void; and, second, that if the indebtedness to the attachment creditors was fraudulently contracted and the goods for which such indebtedness arose procured from such attaching creditors by means of false and fraudulent representations on the part of Wolfe & Son to such creditors, and the mortgagees took their mortgage with knowledge of fraudulent procurement of such goods upon the part of W. F. Wolfe & Son, the mortgages would be invalid as against such creditors as attachment creditors.

At pages 280, 282, 285, 268, 258 and 249 will be found certain letters which W. F. Wolfe, one of the attach-

ment debtors, wrote to the creditors under whose writs the sheriff acted and to other creditors, making certain representations as to the financial strength of the firm of W. F. Wolfe & Son, and upon the faith of which it is claimed the various debts upon which the attachment writs issued were contracted, which statements, it is claimed, were wholly false, and had the attachment plaintiffs known the truth they would not have extended the credit requested. These communications were objected to by the plaintiffs upon the ground, among others, of not being within the issues of the case, no proper foundation laid, and in no way binding upon any of the plaintiffs. These objections were overruled in each instance and these communications read to the jury over the exception of the plaintiffs.

There was no evidence introduced or offered that in any way tended to fix knowledge of the existence of these communications or of their contents upon either or any of the plaintiffs or that the plaintiffs, or either of them, had ever participated in making any representations as to the solvency of Wolfe & Son, and the only communication offered, in any way connected with any such transaction, is an application of one of the attachment creditors to the Bank of Topeka for information, under date of July 24, 1890, concerning the solvency of W. F. Wolfe & Son, and an endorsement on this letter by the cashier of the bank (see printed record p. 278), to the effect that "Wolfe & Son have removed to Oklahoma from Topeka; that the writer does

not know how much property they have, but thinks they would be considered slow pay." A. H. Vance, who acted for all of the mortgage creditors in taking the mortgage, testifies (p. 351 of the record), that he had no knowledge of the existence of any such letters at the time he took the chattel mortgage, as did also J. R. Mulvane, the president of the Bank of Topeka (see record p. 356). Edwin Knowles, in behalf of the Central National Bank of Topeka, testifies to the same (see record p. 360). D. A. Harvey, who also participated in the execution of the mortgages on his own account, being surety for W. F. Wolfe & Son on some of the notes secured by the mortgage, likewise denied knowledge of the letters, and none of the other mortgage creditors were in any way involved in the transactions except through A. H. Vance, claimed to be acting for them.

There is, therefore, a complete absence of proof of knowledge of any of the mortgage creditors and a complete denial of all personal participants in the taking of the mortgage, both principal and agents, of any knowledge of false representations ever having been made to any of the creditors by W. F. Wolfe & Son.

The plaintiffs in error rely in this court for a reversal of this case upon the following specific assignments of error numbered and lettered to correspond with their assignments of error set out at page 412 and 413 of the printed record, to-wit:

1st. The court erred in affirming the judgment of the court below.

2d. A. The court erred in admitting in evidence the letters of W. F. Wolfe & Son to their various creditors which are here claimed to be false and fraudulent, written by W. F. Wolfe & Son to such creditors as a basis to obtaining credit. In these letters W. F. Wolfe & Son in July, 1890, make statements of their property and indebtedness showing a net worth over all liabilities ranging from thirty to forty thousand dollars.

2nd. E. The trial court erred in giving and the Supreme Court of the Territory erred in affirming instruction number two herein set out in full and that part of which complaint is made in this court, being italicized.

"2. The defendant admits that he took possession of the property claimed by the plaintiff, but by way of defense claims that he was sheriff of Oklahoma county, in this Territory, and was acting as such officer under process issued out of this court in two cases, in one of which M. D. Wells & Co. were plaintiffs and W. F. Wolff & Son were defendants, and the other in which Burnham, Hanna, Munger & Company were plaintiffs, and W. F. Wolff & Son defendants; that the property so taken under the process of the court was not the property of plaintiffs, and that they had no right to the possession thereof, for the reason that the mortgage under which they claimed was invalid, for the reason that the firm of W. F. Wolfe & Son at the time they executed the said mortgage were indebted *to said M. B Wells & Co. and Burnham, Hanna, Munger & Co., and a large number of other wholesale creditors, for goods fraudulently procured from them of which said plaintiffs had knowledge at the time of the execution and receipt of said mortgage,* and for the further reason that at the time the plaintiffs took said mortgage their indebtedness against

Wolfe & Son was amply secured; that the same was not taken in good faith, but to aid said Wolfe & Son to cheat and defraud their said other creditors and to hinder and delay them in the collection of their claims; that the real object in the taking of said mortgage was for the purpose of securing D. A. Harvey, A. H. Vance, and J. T. Clark, near relatives to the members of the firm of W. F. Wolfe & Son, on account of their having signed the notes of Wolfe & Son, and not in good faith, to secure the indebtedness of the Wolfes to these plaintiffs."

2d. F. The trial court erred in giving and the Supreme Court of the Territory erred in affirming instruction number three herein set out in full and that part of which complaint is made in this court, being italicized.

3rd. The burden of proof is upon the plaintiffs to show:

"1st That the chattel mortgage was executed to them, to secure a bona fide indebtedness existing at the date of the execution of said mortgage and owing from Wolfe & Son to said plaintiffs; and,

"2d. To further show that at the time of the attachments of defendants were levied upon the stock of goods said plaintiffs in person or by agent, were in the actual possession of said goods, or that chattel mortgage was on file in the office of the register of deeds of Oklahoma county; and,

"3d. To show that the goods seized upon under the attachment writs were the identical goods described in the mortgage of plaintiffs."

If the plaintiffs shall have established these facts, then, in order to defeat their recovery, the burden of proof shifts to the defendant to show:

1st. That said Wolfe & Son were guilty of fraud in contracting the debts, to satisfy which writs of attachment were levied; and

2d. To further show that the plaintiffs were parties to such fraud; and if the defendants shall fail to so establish either of these propositions you must return a verdict for plaintiffs.

2d. J. The trial court erred in giving and the Supreme Court of the Territory erred in affirming instruction number eight herein set out in full and that part of which complaint is made in this court, being italicized.

8. "In order to invalidate the chattel mortgage it is not enough for the defendant to show simply that the firm of W. F. Wolfe & Son fraudulently purchased goods of the attaching creditors, but it must also appear from the evidence that the plaintiffs in this case were parties to such fraud; that they were either active participants in such fraud, or that they aided and abetted in such fraud, or that such *plaintiffs at the time they took such mortgage actually knew that Wolfe & Son had fraudulently incurred a liability and debt for the goods or a portion thereof described in the chattel mortgage.*"

2d. K. The trial court erred in giving and the Supreme Court of the Territory erred in affirming instructruction number nine herein set out in full, that part of which complaint is made in this court, being italicized.

9. "By aiding and abetting is meant such acts as are intentionally done which encourage or assist to such an extent as will in some manner bring about a given result, and unless you find from the evidence that the plaintiffs, with the intent to defraud the attaching creditors, did some act to defraud such creditors or aided and abetted Wolfe & Son to so defraud (*or had actual knowledge that the goods described in the mortgage had been by Wolfe & Son fraudulently obtained*) *you must return a verdict for the plaintiffs.*"

2d. L. The trial court erred in giving and the Supreme Court of the Territory erred in affirming instruction number twelve herein set out in full, that part of which complaint is made in this court, being italicized.

"*12. You are instructed that before a party can annul or treat a contract of sale as void, by reason of the false or fraudulent representations used in inducing the party to sell the goods, it must appear from the evidence that the alleged false or fraudulent representations were made regarding something which had already transpired or was then alleged to exist. No statement of one's opinion as to what will or will not happen or exist in the future can affect a contract of sale or render it void. Every person in making a contract is at liberty to speculate or express opinions as to future events, and he cannot be held to answer for their truth or falsity.*"

2d. M. The trial court erred in giving and the Supreme Court of the Territory erred in affirming instruction number thirteen herein set out in full, and that part of which complaint is made in this court, being italicized.

"*13. You are instructed that any wilful misrepresentation of a material fact, made with a design to deceive another and to induce him to enter into a trade he would not otherwise make, will enable the party who has been defrauded to annul the contract, and it makes no difference whether the party making the misrepresentations knew them to be false or whether he was ignorant of the fact stated, provided the matter stated was material and the party making the statements stated them as true, when in fact he had no apparently good reason for believing it to be true, and when the other party, under the circumstances shown by the evidence, was reasonably justified in relying upon the statements and did rely upon them in selling the goods and was deceived*

or injured thereby. Whether in this case William F. Wolfe & Son or either of them made the fraudulent and false representations alleged, and whether they were false, and, if so made, whether they were made for the fraudulent purpose alleged and were relied upon by the defendants in the sale of their goods, are questions exclusively for the jury, to be determined by the weight of the evidence in the case."

2d. O. The trial court erred in giving and the Supreme Court of the Territory erred in affirming instruction number sixteen herein set out in full, and that part of which complaint is made in this court, being italicized.

16. "You are instructed that under the law a party who transacts business through an agent is bound by the acts of such agent, if done within the scope of the authority of the agency, and the acts of the agent are the acts of the principal, and you are further instructed that where an agent acts beyond the scope of his authority and his acts are afterwards ratified by his principal, the acts of the agent become the acts of the principal and the principal is not permitted to claim and retain the benefits of the agent's acts in part and repudiate the same in part, and if he claims the benefits which accrue from the act, he must likewise assume the burdens and responsibilities which are attendant thereon, and you are instructed that a debtor cannot, under a mere pretense of securing a debt, convey more property than is reasonably necessary for that purpose, if such debtor is in insolvent circumstances, and if the debtor does such act with the intent to secure to himself a portion of the property and baffle his creditors, and if the evidence shows that W. F. Wolfe & Son undertook, in giving the chattel mortgage, to secure an indebtedness which did not exist in fact (or if the evidence shows that at the time such mortgage was given *the agent who took the mortgage—if such agency ex-*

isted—knew that W. F. Wolfe & Son had fraudulently purchased the goods given to secure the indebtedness named in the mortgage), or if any of said mortgagees were parties to a fraudulent transaction of W. F. Wolfe & Son in the purchase of such goods, then the mortgage given in this case is invalid as to each of plaintiffs who participated in such fraud, and the jury should so find."

2d. The court erred in overruling plaintiff's motion for a new trial.

2d. T. The court erred in rendering judgment on the verdidct.

4th. The court erred in holding, as a principle of law that where goods have been fraudulently obtained by means of false representations as to the financial standing of the debtor, and where such creditors elect to sue for the purchase price of such goods and proceed by the attachment of the property claimed to belong to the debtor, that a party previously taking a mortgage on such goods to secure an antecedent debt with knowledge of such fraudulent representations must surrender such property to attachment creditors.

ARGUMENT.

THE COURT BELOW ERRED IN ITS TREATMENT OF THE QUESTION ATTEMPTED TO BE RAISED THAT W. F. WOLFE AND SON HAD FRAUDULENTLY CONTRACTED THE DEBT OF THE CREDITORS UNDER WHOSE WRIT THE DEFENDANT ATTEMPTED TO JUSTIFY IN THE FOLLOWING PARTICULARS, TO-WIT:

1ST. IN ADMITTING IN EVIDENCE THE REPRESENTATIONS MADE BY W. F. WOLFE & SON TO SUCH CREDITORS WITHOUT ANY PROOF OF PARTICIPATION THEREIN BY THE MORGAGE CREDITORS OR EITHER OF THEM AND WITHOUT ANY PROOF OR KNOWLEDGE OF NOTICE ON THEIR PART OF SUCH REPRESENTATIONS HAVING BEEN MADE.

2D. IN SUBMITTING THE QUESTION TO THE JURY IN THE ABSENCE OF SUCH PROOF OF PARTICIPATION OR NOTICE OF SUCH FALSE REPRESENTATIONS ON THE PART OF THE PLAINTIFFS.

3D. IN SUBMITTING THE FRAUDULENT PROCUREMENT OF CREDIT FROM THE ATTACHMENT CREDITORS BY THEIR DEBTORS AS A DISTINCTIVE GROUND OF DEFENSE IN A CON-

TEST BETWEEN THE MORTGAGE CREDITORS AND THE ATTACHMENT CREDITORS OF THE SAME PROPERTY.

4TH. IN GIVING THE SHERIFF THE STATUS UNDER HIS WRIT OF ATTACHMENT THAT HIS CREDITORS WOULD HAVE HAD UNDER A WRIT OF REPLEVIN IN DISAFFIRMANCE OF THE SALE FROM THE ATTACHMENT CREDITOR TO THE ATTACHMENT DEBTOR.

FIRST. THE COURT ERRED IN ADMITTING IN EVIDENCE THE REPRESENTATIONS MADE BY W. F. WOLF & SON TO THEIR CREDTIORS WIHOUT PROOF OF PARTICIPATION THEREIN BY THE MORTGAGE CREDITORS, AND WITHOUT ANY PROOF OF NOTICE ON THEIR PART OF SUCH REPRESENTATIONS HAVING BEEN MADE.

SECOND. THE COURT ALSO ERRED IN SUBMITTING THE QUESTION TO THE JURY IN THE ABSENCE OF SUCH PROOF OF PARTICIPATION OR NOTICE OF SUCH FALSE REPRESENTATIONS ON THE PART OF THE PLAINTIFFS.

The record in this case will be searched in vain for the slightest clue indicating in the remotest degree any notice or knowledge on the part of either or any of the mortgagees, or either or any of the agents taking such mortgage in their behalf, of any fraudulent representations made by Wolfe & Son to their other creditors. The record stops short with the proof of the making of such

representations by W. F. Wolfe. Indeed, one of the attachment creditors applied to the cashier of the plaintiff, the Bank of Topeka, for information with regard to W. F. Wolfe & Son, and instead of receiving information that would be calculated to inspire confidence, received a statement calculated to inspire distrust. See letter of J. W. Thurston above referred to. The case in this phase of it presents the spectacle of the admission of important evidence calculated to prejudice the minds of the jury in a very high degree against the plaintiffs without any foundation being laid for its introduction in any way connecting the plaintiffs therewith, and in submitting that same hypothesis to the jury without the slightest evidence to support it. In this respect the learned court below committed even a graver error than the trial court.

In the case of Jaffrey vs. Wolfe, 4 Ok., 303, Wolfe made a motion to discharge the attachments which had been levied against him upon the ground that the affidavits charging him with fraud upon which the writs issued were untrue. To these actions none of the present plaintiffs were parties, nor in any way involved, but in that case the Supreme Court of the Territory in deciding in favor of the validity of the attachments and that Wolfe & Son were guilty of sufficient fraud to sustain such attachments, dispensing with the necessity of the presence of the mortgage creditors upon the record, also assumed jurisdiction to decide the cause as though they were parties and held their mortgage to be invalid.

and that they had ample notice of all of the fraudulent acts of Wolfe & Son. In the opinion in the present case the right of the plaintiffs to complain of the sufficiency of the evidence on the question of notice was deemed to be foreclosed and adjudicated by the former case of Jaffrey vs. Wolfe, to which they were not parties, and the court below, in the present case, instead of dealing with the evidence as presented by this record and its sufficiency to warrant the consideration by the jury of the claim that Wolfe & Son had procured credit of the attachment creditors by means of false representations, and that the plaintiffs had notice of such facts, referred to the case of Jaffrey vs. Wolfe as being final on that question.

On the point that the court erred in submitting this question to the jury upon this hypothesis, we cite:

Ency. Pleading and Practice, v. 11, p. 161.

THIRD. THE COURT ERRED IN SUBMITTING THE FRAUDULENT PROCUREMENT OF CREDIT FROM THE ATTACHMENT CREITORS AS A DISTINCTIVE GROUND OF DEFENSE IN A CONTEST BETWEEN THE MORTGAGE CREDIORS AND THE ATTACHMENT CREDITORS OF THE SAME PROPERTY.

FOURTH. IN GIVING THE SHERIFF THE STATUS UNDER HIS WRIT OF ATTACHMENT

THAT THE PLAINTIFFS IN SUCH WRIT WOULD HAVE HAD UNDER A WRIT OF REPLEVIN SEEKING TO RESCIND THE SALE.

In the second instruction the jury are told that the defendant's principal defense rests in the claim that the attachment creditors have been defrauded of their goods by W. F. Wolfe & Son, and that the plaintiffs at the time of taking their mortgage knew it.

In the tird instruction the jury were told that if the defendant established such facts the verdict should be for him.

In the eighth instruction the jury are told that the existence of such facts would invalidate the chattel mortgage.

In the ninth instruction this proposition was repeated in substance.

In the eleventh instruction what would amount to a fraudulent procurement by Wolfe of the property of the attachment creditors is defined and such acts declared frauds in fact upon the vendor.

In the twelfth instruction, and also in the thirteenth instruction, the jury are told, in substance, that if the false representations were made and were relied upon, that the vendors would be entitled to annul their contract of sale to W. F. Wolfe & Son.

In the sixteenth instruction the jury are told that if such fraudulent representations were made, and the agent who took the mortgage had knowledge thereof, the mortgage would be invalid and the jury should so find.

The learned court below conceived the effect of this charge to be merely a submission to the jury of this question as a probative fact on the question of fraud or good faith on the part of the mortgage creditors in taking the mortgage, saying:

"That goods were fraudulently obtained from the attaching creditors was neither pleaded nor proved by the defendants for the purpose of establishing indepedently therefrom a right of recovery or as in itself absolutely establishing a defense, but was pleaded and proven as a probative fact tending to establish the real fact in issue, to-wit, whether the mortgage under which the plaintiffs were claiming was fraudulent and void as to creditors."

Whatever intention the learned court below may have imputed to the defendant in making such proofs, the trial court submitted the case on no such theory. He did not tell the jury that the frauduent procurement of the goods was a fact they could take into consideration in determining whether the mortgagee's intentions and conduct were fraudulent in and about the transaction, but he did succinctly inform the jury, at least five times in the course of his charge, that if the goods were fraudulently procured and the plaintiffs knew it, they should find for the defendant. The court did not treat the circumstances as a probative fact, but plainly informed the jury that the facts, if proven, constituted a complete defense to the action. In this respect the learned court below has entirely misconstrued the charge of the trial court.

Again, the court below, in describing the theory upon which the defendant tried the case, says:

"He asserts that no title to the property other than a voidable or defeasible title passed from the attaching creditors to the mortgagors, and that such title being voidable and defeasible, no title thereto would pass to the mortgagees unless they were *bona fide* mortgagees."

This position is utterly untenable under the law.

Will counsel claim that this sheriff after levying on this property as the property of his debtor, and declaring thereby that he had an attachable interest therein, be permitted to claim that they had no transferable interest? Will they claim that the action of the creditors in attaching did not ratify the sale from the beginning and give the vendee a perfect and not a voidable title from the beginning? Will they even contend that after the levy of the attachment writs sued out upon grounds the disclosures of which also disclosed a full knowledge of all their rights at the time of electing that remedy, that the attachment creditors could have dismissed their attachments and maintained an action to recover the property of which they claimed they were defrauded even in the hands of W. F. Wolfe & Son?

If one of the attachment creditors under whose writ the sheriff justified had, instead of attaching, instituted a suit in replevin, the charge in the present case would afford complete material to furnish an instruction covering every point in the case correctly or incorrectly stated, and the entire decision of the court below is based upon an erroneous construction of the entire import of the charge. The fact cannot be masked that the defendant was allowed to approbate and reprobate, and that in a single proceeding, and at the same time,

and that he gained all the substantial advantages that an action in replevin would have given his creditors had they sought to rescind their contract of sale and implanted the same equity upon other porperty of the debtor than that of which they had been defrauded.

We contend that *our abstract propositions of law*, the soundness of which the court below admits, apply in the concrete to the facts of this case. They have been applied to the precise state of facts involved in this record in two very well considered cases cited in our brief in the court below and not noticed in the opinion. We refer the court to the decision of the supreme court of Missouri in the case of Stokes vs. Burns, 33, S. W. Rep., 460, in which the attaching creditors proved that the mortgage creditors participated in the making of the false representations which secured the granting of credit, and had knowledge at the time of the taking of their mortgage of the fact of such false representations having been made by the debtor to his other creditors, and in such respect only differs from the case at bar. It was held that a creditor may take a mortgage in good faith, even though the mortgaged property had been fraudulently procured and the mortgagee knew it, where the vendor, instead of seeking by appropriate remedy to rescind the sale, sues for the price of the goods and proceeds by attachment.

In the opinion of the court it is pertinently suggested: "Again, in this case the alleged fraud on the part of defendant in procuring the property, whether of

plaintiff or the other attaching creditors, was wholly immaterial. The plaintiff, by suing upon his account, waived the fraud in the sale and treated it thereby as the property of the defendants, with the same power of disposition in defendants over it as of any other property owned by them.' So also in a case precisely like this—O'Donald vs. Constant, 82 Ind., 212—it is held that where a vendor claims to have been defrauded by his vendee, and the vendee has appropriated the goods so obtained in payment or security of other debts, and the vendor seeks to recover by attachment of the vendee's property, he affirms the vendee's title and places himself in the position of an ordinary creditor and entitles himself to impeach the sale or mortgage on no other ground than those equally available to other creditors.

The above rulings are in consonance with all the authorities dealing with the principle of sales and the election of remedies by vendors. Where the right of recision exists in the vendor, a suit for the price affirms the sale and obliterates every infirmity existing in the vendee's title. The case of Bach vs. Tuck, (N. Y. Ct. App.), 26 N. E. Rep. 1019, is decisive of this case on principle. It was there held that an attachment suit based on an affidavit that the goods had been fraudulently procured was such an affirmance of the sale that a subsequent action could not be maintained seeking to reclaim the goods and to rescind the sale, and that the attachment affidavit, based on such ground, con-

clusively proved an election, with full knowledge, to affirm the sale and treat the goods as unqualifiedly the property of the vendee. Even in conditional sales, where the vendor who reserves title brings suit or levies an execution or writ of attachment upon the property which, by the terms of the sale, he retains title, it is an abandonment of every vestige of title and has the effect of vesting absolute title in the vendee. Thus, in Thomason vs. Lewis, (Ala.), 15 So. 830, it is held that if the vendor by attachment or execution against the vendee, levies on the property as belonging to the vendee, he will be deemed to have abandoned his claim; citing Lehman vs. VanWinkle, 92 Ala. 443, 8 So. 872; Engine Co. vs. Hall, 89 Ala. 628; 7 So. Rep. 187; Dowdell vs. Lumber Co., 84 Ala. 316; 4 So. Rep. 431; Iron Works vs. Smith, 13 So. Rep. 525; Evans Sheriff, vs. Rothschild, 54 Kans. 747, 39 Pac. Rep. 701. It is held that where a party having full knowledge of all of the material facts affecting his rights with reference to goods sold by him to a purchaser who is charged with having obtained them fraudulently and intending never to pay for them, sues for the purchase price of the goods, he thereby elects to affirm the sale and cannot thereafter maintain an action to recover the specific property because of the fraudulent purpose of the purchaser. The supreme court of Nebraska, in the case of First National Bank vs. McKinney, 66 N. W. Rep. 280, in passing on a similar question, says:

"A vendor who is induced to part with the pos-

session of property through the fraud of a purchaser has his election to rescind the contract and reclaim the property sold or to ratify the sale and pursue his ordinary remedy by action ex contractu, but such remedies are not concurrent and by electing to pursue one, with knowledge of the facts, he waives his right to pursue the other."

Citing Morris vs. Rexford, 18 N. Y., 552; Rodermund vs. Clark, 46 N. Y., 334; Bach vs. Tuck, (N. Y.), 26 N. E. 1019; Shoe Co. vs. Block, (Ark.),12 S. W., 1073; Herman on Estoppel, Sec. 1051.

As illustrating other phases of the doctrine of election as applicable to this case, VanWinkle Co. vs. Crowell, 146 U. S., 42, is instructive. It is there held that a suit to enforce a mechanic's lien for machinery sold waived a claim of conditional sale by which title remained vested in the vendor.

In direct affirmance of the principles we are contending for, we also cite:

Wachsmuth vs. Simms, 32 S. W. Rep., 821;

Park & Lacy Co., vs. White River Co., (Cal.), 35 Pac., 442.

The case of Terry vs. Munger,. (N. Y.), 24 N. E R., 272, holds that where parties wrongfully detach and carry away machinery belonging to plaintiff and he sues them on an implied contract of sale, such action on the part of the plaintiff passes a perfect title to the wrongdoers to the property so wrongfully taken, and that the

election is final and that suit cannot be subsequently maintained for the purpose of recovering the property so taken.

The case of Kolsky vs. Loveman, 12, So. Rep., 720, further illustrates the proposition that equities preceding a sale cannot be tacked to an attachment suit. The plaintiff had there sold a certain property retaining title in himself. Instead of reclaiming the property on default, he sued for the purchase price and attached. A claim of exemption was asserted by defendant of the attached property, and the plaintiff asserted his specific claim on the property as a bar to the claim of exemption. It was held that it could not be done and that the attachment suit waived all title to the property in the plaintiff; citing Crossman vs. Rubber Co., (N. Y. App.), 27 N. E. Rep., 400; S. C. 13, Law. Rep. Ann., 91, and authorities quoted in note; Bigelow on Estoppel, pp. 601-604; 6 A. & Eng. Ency. of Law, pp. 2 and 32; Field vs. Langsdorf, 43 Mo., 32.

We also cite Lowenstein vs. Glass, (La.), 20 So., 890; and Fuller vs. Eanes, 19 So., 366.

We believe that no authority can be found which will hold that when such a vendor with full knowledge of the facts as is disclosed here sues for the purchase price and attaches the property so procured as the property of the vendee, such vendor cannot assert in support of such attachment in a contest with the mortgagee that the mortgage is invalid by reason of such facts and by reason of the mortgagee's knowledge

thereof at the time of taking his mortgage. The leading cases cited are well reasoned and are well supported in principle as disclosed by the other authorities cited. The remedies of the vendors of these goods were not concurrent but were inconsistent. But the court instructed the jury just as though these plaintiffs on one branch of the case were seeking to retake their goods and just as a court would instruct a jury if that had been all there was in the case, thereby giving them the advantage dreived from a replevin suit to retake their goods and at the same time gave them the status of attaching creditors seeking to impeach a mortgage on the same property upon the allegation that it was not executed and received in good faith. No matter how honest the motives of the parties to the mortgage transaction might be considered as an independent transaction, if the mortgagees knew that the mortgagor had acquired title to a part of the mortgaged property wrongfully, the court, by the instructions in question, not only gave them a superior right to the goods of which they had been wronged, but a superior right to a mortgage in good faith of goods not purchased of the attaching creditors and in which the right of disposition in such mortgagor would be unquestioned.

We submit, that the law will not permit a party to drive a replevin and an attachment suit, growing out of the same transaction, abreast in a single proceeding.

ON THE MOTION TO DISMISS.

The present motion to dismiss was made in the court below, see printed record p. 405. The record also contains the suggestions made against it by the plaintiffs in error, which will be found in the printed record at page 408. To what is there said we have very little to add, except to call the court's attention to the substantial admission made in the motion of the defendant in eror below, on page 405, to the substantial effect that by a clerical mistake in the exception to the order overruling the motion for a new trial the word "defendants" is written for "Plaintiffs." In the motion in the court below defendant in error says:

"Just how this came, we are not able to state, but it will be observed that it was the plaintiff's motion for a new trial and that the ruling of the court thereon was adverse to the plaintiffs. Therefore, the exception should have been saved by the plaintiffs and not by the defendants. *It may be, and perhaps is, that this was a clerical error*, but it will be seen from the authorities cited below that it is an error which cannot be cured."

The strength of this admission, coupled with a rule laid down in Edmonson vs. Beals, 27 Kansas, 656, "mere clerical errors in a record brought to this court for review will always be disregarded," amply justified the action of the court below in overruling the motion of defendant in error to dismiss the case. We do not deny that under the law regarding the practice in making cases for review under the code of the Territory, that a case-

made once settled cannot be amended, but we do deny that there is any rule of captious or narrow construction of such a record, and if the exceptions were necessary at the point where the exception in question is located, it is sufficiently manifest that the exception in question is an exception taken by the plaintiffs in error to warrant this court in treating it as such. Were it otherwise, the second exception, found at the close of the same entry, see record page 402, to which said judgment and each and every part thereof the said plaintiffs and each of them duly excepted and except would still be sufficinent to reach the ruling on the motion for a new trial, and is a technically correct exception under the statutes of the Territory. By section 313, Oklahoma Code of Civil Procedure, it is provided:

"No particular form of exception is required."

By section 314, same, it is provided:

"Where the decision objected to is entered on the record and the grounds of objection appear in the entry, the exception may be taken by the party causing to be noted at the end of the decision that he excepts."

The recitation of an exception duly taken as a recitation of a fact and not purporting to give the language of the exception itself, is correct under the Kansas practice, even though it runs to numerous preceding subjects.

K. P. Ry. vs. Nichols, 9 Kans., 235.

Bard vs. Elston, 31 Kans., 274.

The word "judgment" and each and every part thereof as used in the latter exception, refers to the entire entry.

We also observe that counsel for defendant in error is mistaken in the statement that no error is assigned in this court to the rendition of the judgment itself, as that speciffic assignment is made in subdivision "I" of the second assignment of errors, see record page 413.

Respectfully submitted,

JOHN W. SHARTEL,

Attorney for Plaintiff in Error.

Clerk Supreme Court U. S.
FILED
MAR 10 1900
JAMES H. McKENNEY,
Clerk.

No. 245.

Br. of Birney for D. C. Comm

Filed Mar. 10, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 245.

WILLIAM C. BROWNING ET AL.

vs.

CHAS. H. DE FORD.

Motion to Dismiss the Writ of Error and the Appeal, and Brief for Defendant in Error on the Motion.

ARTHUR A. BIRNEY,
Attorney for Defendant in Error.

LAW REPORTER PRINT.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 245.

WILLIAM C. BROWNING ET AL., PLAINTIFFS IN ERROR, AND APPELLANTS,

vs.

CHARLES H. DE FORD.

Comes now the said Charles H. De Ford, defendant in error, and moves the court to dismiss the writ of error and the appeal herein, for that it appears from the record that no exceptions were saved by the plaintiffs in error to the order of the trial court overruling their motion for new trial before the tender of the case made, and all assignments of error are based on exceptions supposed to have been committed in such order.

ARTHUR A. BIRNEY,
Attorney for Defendant in Error and Appellee.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 245.

WILLIAM C. BROWNING ET AL.

vs.

CHAS. H. DE FORD.

Brief for Defendant in Error on Motion to Dismiss the Writ of Error and the Appeal.

This motion is based upon the failure of the plaintiffs in error to except to the judgment overruling their motion for new trial. The record shows only an exception by this defendant (Rec., p. 402).

There have been three codes of practice in Oklahoma; namely, the Nebraska, the Indiana and the Kansas. The Kansas Code (superseding the Indiana Code), went into effect August 14, 1893 (see Certif. of Sec. of Ok. Ter., Stat. of 1893), but by virtue of a provision of the statutes (Sec. 4633, p. 888, Stat. of 1893), the proceedings in this, as in other cases then pending, were governed to the time of judg-

ment by the Indiana Code. The judgment was rendered December 29, 1895. All proceedings from that time are governed by the Kansas Code.

Upon the record the plaintiffs in error have an exception to the judgment (Rec., p. 402), but have no exception to the overruling of the motion for new trial.

That under the Kansas Code exceptions taken during a trial cannot be considered in the appellate court unless the same be brought to the attention of the trial court by motion for new trial, followed by an exception to the refusal to grant a new trial, seems to be settled.

Decker *vs.* House, 30 Kansas, 616.
Hostetter *vs.* Hoke, 17 Kansas, 82.

The Kansas Code having been adopted in Oklahoma, the decisions of the Supreme Court of Kansas construing its provisions have the same force and effect as if made by the Supreme Court of Oklahoma.

The decisions of the territorial Supreme Court follow the doctrines of the Kansas court in the cases above cited.

Carson *vs.* Butt, 4 Okla. 133.
Jones *vs.* Territory, Ib. 45.
Rogers *vs.* Bennett, Ib. 90.
Richardson *vs.* McKay, Ib. 328.
Long *vs.* Commissioners, 5 Okla. 128.
Severy *vs.* Railroad Co. 6 Ib. 153.
Ryland *vs.* Coyle, 7 Ib. 226.
Masters *vs.* Winfield, Ib. 487.

It is to be borne in mind that the cause is not before the court on bill of exceptions, but upon a case made, framed after the trial (Rec., p. 403).

It will be urged that the statement in the record of the order overruling the motion for new trial, that the defendants excepted (Rec., p. 402) is a clerical error, and that "defendants" should be read *plaintiffs*. We answer that there

is nothing to support this claim of mistake, and that the court must therefore accept the record as it finds it. The case-made can not be changed in any particular after it is signed and filed. It is to be taken as it reads.

Furman *vs.* Grand Lodge, etc. 6 Okla. 649.
Ryland *vs.* Coyle, 7 Okla. 226.
Mulanney *vs.* Humes, 27 Pacific Rep. 817.
Gamble *vs.* Hodges, 17 Kans. 24.

The plaintiffs in error are therefore without an exception to anything which occurred at the trial. They have an exception to the final judgment, but this judgment was wholly apart from the order overruling the motion for new trial, and no assignment of error has been made attacking it.

There is, therefore, nothing properly before the court on the writ of error. The assignments of error do not challenge the pleadings or the judgment, and therefore there is nothing to be considered under the appeal. Both appeal and writ of error should be dismissed.

ARTHUR A. BIRNEY,
Attorney for Defendant in Error.

No. 245.
Brf. of Birney for D. C.

FILED
APR 12 1900
JAMES H. McKENNEY,
Clerk.

Filed April 12, 1900.

In the Supreme Court of the United States

OCTOBER TERM, 1899.

No. 245.

WILLIAM C. BROWNING ET AL., APPELLANTS AND PLAINTIFFS IN ERROR,

vs.

CHARLES H. DE FORD ET AL.

Brief for Defendant in Error and Appellee.

A. A. BIRNEY,
Attorney for Deft. in Error and Appellee.

LAW REPORTER PRINT.

In the Supreme Court of the United States

OCTOBER TERM, 1899.

No. 245.

WILLIAM C. BROWNING ET AL., APPELLANTS AND PLAINTIFFS IN ERROR,

vs.

CHARLES H. DE FORD ET AL.

Brief for Defendant in Error and Appellee.

STATEMENT OF THE CASE.

The plaintiffs in error were plaintiffs in the trial court, the District Court of Logan County, Oklahoma. They are the mercantile firms of Henry W. King & Co. of Chicago, and Tootle, Wheeler & Motter of St. Joseph (Mo.), the Central National Bank of Topeka (Kans.), the Bank of Topeka, and A. H. Vance. They brought their several suits in April, 1891, against the defendant Charles H. De Ford (who was sheriff of Oklahoma County), Leander T. Shockey (sheriff of Logan County), and a number of mercantile firms, non-resident of Oklahoma, charging the conversion by them of two stocks of merchandise situate at Oklahoma City and Guthrie, respectively. By stipulation (Rec., p. 15), the several actions were consolidated into two—one of which was to be against De Ford and the mercantile houses alluded to, for conversion of the Oklahoma City goods; the other against Shockey and the same merchants, for conversion of the Guthrie goods.

"The supplemental consolidated complaint," filed October 13, 1893, against Sheriff De Ford, joins with him as defend-

ants Sweet, Dempster & Co. of Chicago, A. Frankenthal & Bro. of St. Louis (Mo.), John V. Farwell & Co. of Chicago, M. D. Wells & Co. of Chicago, Rice, Stix & Co. of St. Louis, E. S. Jaffrey & Co. of New York, Burnham, Hanna, Munger & Co. of Kansas City, and Moses Byrne.

Plaintiffs claim as mortgagees in possession, under a mortgage made December 15, 1890, by W. F. Wolfe & Son, of Oklahoma City and Guthrie, and charge that the defendants, on December 5, 1890, forcibly took the goods from them, and converted them to their own use (Rec., p. 20).

The answer of the sheriff, De Ford, justifies under two writs of attachments issued against W. F. Wolfe & Son, one of which was at the suit of M. D. Wells & Co., for $2,500.21, and the other at the suit of Burnham, Hanna, Munger & Co., for $3,500 (Rec., pp. 31, 34).

The answer further charges that the mortgage under which plaintiffs claim is void as a fraudulent device made to cheat, hinder and delay the creditors of W. F. Wolfe & Son in the collection of their just demands.

The Facts as Proven.

At the time the two attachments in question here were sued out, the defendants, E. S. Jaffray & Co. brought their suit in attachment against W. F. Wolfe & Son, and attached these same goods. The defense was based on the mortgage here set up, and the issues of law and of fact were in all respects similar to the issues here. The attachment was sustained on the ground that the evidence proved the mortgage fraudulent, the case being heard on demurrer to the evidence. The review of the evidence by the Supreme Court of Oklahoma (4 Oklahoma, 303) is a very clear statement of what appears in this case.

In substance the evidence establishes facts as follows:

W. F. Wolfe & Son conducted a general mercantile business at Topeka, Kansas, from 1879 to the early part of June, 1890, at which time they removed from Topeka and

opened stores at Guthrie and Oklahoma City, to which they removed part or all of their Topeka goods. The firm consisted of William F. Wolf and his son Louis H. Another son, Frederick W., had also been a partner.

At the time of removal the firm claimed to be indebted to the plaintiffs as follows:

To Henry W. King & Co., $1,308.54 on notes maturing July 15 and August 15, 1890, and originating in a debt created in 1889 (Rec. p. 57).

To Tootle, Hosea & Co. $6,600, on three notes to mature respectively, November 1, 1890, December 1, 1890, and January 1, 1890 (Rec. p. 56).

To the Bank of Topeka $9,100, on four notes which originated in 1887 (Rec. p. 40), and were renewed every three months afterward.

To the Central National Bank of Topeka $2,000, on two notes for $1,000 each, which originated in 1889, and were renewed every three months.

The plaintiff A. H. Vance who had married a daughter of the elder Wolfe, held three notes for $1,900, for money alleged to have been loaned in 1888 and 1889 (Rec., p. 67).

Upon all the notes, except two of the last three above mentioned, A. H. Vance was a joint maker for accommodation.

As a part of their plan to obtain credit and pay the above demands out of the goods of others, William F. and Louis H. Wolfe disposed of all their real estate as follows:

July 5, 1887, Louis H. Wolfe conveyed to his wife in consideration of love and affection, his Lot 15 on Greenwood avenue, Topeka (Rec. p. 211).

May 17, 1890, William F. and Louis H. Wolfe assigned to the wife of the first named, certificates for their townsite lots in Oklahoma City, being the site of their business house in that place (Rec., pp. 203, 207).

Mrs. Wolfe claims to have put $11,000 into the firm at some indefinite time in the past, but admits this was money received from her husband (Rec., p. 205).

July 26, 1890, William F. Wolfe and wife conveyed to their daughter, Laura V., wife of the plaintiff, A. H. Vance, Lot 20 Greenwood avenue, Topeka, by deed in fee with covenants of general warranty (Rec., p. 212). This conveyance was without present consideration, and without any consideration except the $1,900 claimed to be due A. H. Vance, who now claims the conveyance was by way of security for the debt (Rec., p. 73).

The consideration named in this conveyance is $6,500; the real value *as testified by Vance himself* was $9,000 and it had been estimated as worth more (Rec., p. 216). It was subject to a mortgage for $4,500.

None of the deeds above mentioned were recorded until December 17, 1890, two days after Vance took the mortgage under which he and his co-plaintiffs claim.

Immediately on their removal to Guthrie and Oklahoma City in early June, 1890, W. F. Wolfe & Son commenced to buy goods on credit, and to secure such credit, made statements of their affairs so clearly false that no excuse for them can be attempted.

From the defendants Burnham, Hanna, Munger & Co., they obtained goods to the amount of $5,888.16, on the faith of a false statement, dated June 7, 1890, showing assets over liabilities of $53,500 (Rec., p. 258). On December 15, 1890, this debt was $4,799.07 (Rec., p. 253).

From John G. Miller & Co. they obtained goods to the amount of $2,445.50 upon a false statement dated August 22, 1890, showing net assets of $61,000, including the real estate in Topeka and Oklahoma City, conveyed by the unrecorded deeds above recited (Rec., p. 268).

John G. Miller & Co., before giving the credit, inquired of the plaintiff, the Bank of Topeka, the standing of Wolfe & Son, and received, July 28, an evasive answer (Rec., p. 278).

To Rice, Stix & Co. they made statements May 7, May 12 and July 29, the last showing net assets $62,000 (Rec.,

p. 280–281, 282), tried to get $2,000 credit, and did get $754 of goods.

From E. S. Jaffray & Co. they obtained $5,250 of goods on a false statement dated July 29, in which the secretly conveyed real estate is stated at $32,000, and net assets at $57,000 (Rec., p. 285).

From J. V. Farwell & Co. they obtained goods on the faith of a statement made February 10, declaring themselves worth from $75,000 to $100,000. (Rec., p. 292.)

From defendants A. Frankenthal & Bro. they obtained $195.85 of goods in August, on a false statement of March 29, 1890 (Rec., p. 297), and from Sweet, Dempster & Co. they also obtained goods for which on December 15, 1890, they owed $1,374.26 (Rec., p. 295).

From M. D. Wells & Co., defendants, they obtained $2,489.31 on a false statement made July 28, 1890, stating net assets at $57,000, and including the real estate (Rec., p. 249).

Of these accounts they owed on December 15, 1890, more than $17,600.

On that day the plaintiff Vance, who is an attorney at law and lived at Topeka, went to Oklahoma at the request of W. F. Wolfe (Rec., p. 354), where on the same day he drew up the chattel mortgage under which the plaintiffs claim title (Rec., p. 79). The effect of this deed was to turn over to Vance and his present co-plaintiffs, for the satisfaction of their demands, the goods purchased from the merchants who had sold to Wolfe & Son since May, 1890. This mortgage was drawn by Vance, who had general authority from all the plaintiffs to represent them in the Wolfe matter (Rec., pp. 221, 224), and included as an obligation secured by it, *the satisfied debt of Vance.* Vance at once took possession of the goods and made preparation for their sale. He then returned to Topeka, where he caused the deeds of real estate to be recorded on December 17 (Rec., pp. 212, 213). The defendant merchants promptly sued W. F. Wolfe &

Son, and, ignoring the chattel mortgage as fraudulent, attached all the goods covered by it (Rec., pp. 139, 141), and they were sold by the sheriff for $3,700.00 (Rec., p. 145). Plaintiffs sued as for a wrongful seizure of their property, and the sheriff justified under the writs of attachment and averred that the mortgage was fraudulent and void.

Upon this issue the verdict was for the defendant, and a motion for new trial was overruled, and the judgment was afterward affirmed by the Supreme Court of Oklahoma.

The record does not show that the plaintiffs excepted to the overruling of the motion for new trial. This forms the basis of defendant's motion to dismiss which is submitted herewith.

The Assignments of Error (413).

The plaintiffs in error make twenty assignments of error, but, as the case was presented in the Supreme Court of Oklahoma, the only real questions are whether the cause was tried upon correct legal principles, and whether the trial court was right in permitting proofs to be made of the frauds practiced by W. F. Wolfe & Son in creating their debts to the attaching creditors, and in suffering the jury to consider this evidence in determining the issues.

The opinion of the Supreme Court of Oklahoma presents a complete answer to the contention of plaintiffs in error in this behalf, and leaves little to be said.

The claim of the defendant is, and was at the trial, that the mortgage was void, not simply because the goods were fraudulently obtained by Wolf & Son, because the conveyance was made with the intent and purpose of defrauding their creditors, and that in this purpose the plaintiffs participated. To establish this fraudulent purpose and participation proof was given of a chain of facts leading to one result, and from them to the jury, were told to consider if fraudulent purpose *in all or any of the plaintiffs* was established. The theory of plaintiffs' attorneys is that only the

circumstances attending the making of the mortgage on December 15 may be considered. The theory of defendant is that the wicked and fraudulent scheme originated before Wolfe & Son went to Guthrie, and the doings on December 15 were only the final acts in the conspiracy. It was on this latter theory that the evidence objected to in the second assignment of error (Rec., p. 412) was admitted. No question of waiver was involved; the false statements tended to prove the *fraudulent character of the mortgage;* that they also proved the purchases fraudulent did not make them inadmissible.

> "All papers executed in pursuance of an original design, contemplated and determined upon in the beginning, are in law deemed to constitute one transaction, and are construed together, whether made on the same day or on different days; . . . whether the instruments constitute one transaction is a question for the jury."
>
> Bump on Fraud. Conveyances, Sec. 339.

If the act or declaration is so connected with the main fact under consideration as *to explain its character, further its object, or to form in conjunction with it one continuous transaction*, the evidence is admissible, without regard to the time when the act was done or the declaration was made.

> Bump. on Fr. Con. 590, 594, 595.
>
> Cooke *vs.* Cooke, 43 Md. 522.

The Instructions.

The consistent effort of the trial court to restrict the jury to the single question, whether the mortgage was fraudulent, is shown by the entire charge, but especially by the 4th, 6th, 7th, 8th, 9th and 10th paragraphs (Rec., pp. 384, 385), which certainly imposed on the defendant as great a burden as the law required him to carry.

The verdict then established as to each plaintiff that he

> "with the intent to defraud the attaching creditors did some act to defraud such creditors, or aided and

> abetted Wolfe & Son to so defraud, or had actual knowledge that the goods described in the mortgage had been by Wolfe & Son fraudulently obtained."

It would seem a shockingly immoral proposition to claim that from such a verdict, based on legally sufficient evidence, the plaintiffs should be relieved.

An antecedent creditor who knows that his debtor procured goods by fraudulent means, cannot by a chattel mortgage secure a lien upon such goods adverse to the innocent vendor thereof.

> Stern *vs.* Gage, 79 N. Y. 102.
> Wafer *vs.* Harvey Co. Bank, 26 Pac. R. 1032.

Of the three things which must concur to protect the title of the purchaser, the first is: He must buy without notice of the bad intent on the part of the vendor.

> 14 Am. & Eng. Encyc. Law (2d Ed.), 287.

The decisions of this court are conclusive upon this point. In Blennerhassett *vs.* Sherman, 105 U. S. 100, the court said (p. 117):

> "It is not enough, in order to support a settlement against creditors that it be made for a valuable consideration. It must be also *bona fide*. If it be made with intent to hinder, delay or defraud them, it is void as against them, although there may be in the strictest sense a valuable, or even an adequate, consideration."

See also—

> Kempner *vs.* Churchill, 8 Wall. 362.
> Clements *vs.* Moore, 6 Wall. at 312.

It is submitted that the judgment of the Supreme Court of Oklohama should be affirmed.

A. A. BIRNEY,
Attorney for Deft. in Error and Appellee.

BROWNING *v.* DE FORD.

ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

No. 245. Argued April 16, 17, 1900. —Decided May 21, 1900.

General creditors attaching the goods of an insolvent debtor upon the ground that they had been purchased under fraudulent representations, when sued by chattel mortgagees of said debtor, may attack the mortgage by showing that the mortgagees knew that the goods had been fraudulently purchased.

THIS was an action in the nature of trover by the surviving partners of the firm of Henry W. King & Company, and four other creditors, as chattel mortgagees, against Charles H. De Ford, sheriff of Oklahoma County, to recover the value of a stock of goods seized by the defendant and sold under writs of attachment issued against the property of the firm of W. F. Wolfe & Son, in suits instituted by general creditors of that firm.

Defendant justified under these writs of attachment, and alleged that the indebtedness of each of the attaching plaintiffs was procured by W. F. Wolfe & Son by means of false and fraudulent representations as to their financial standing and credit; that the mortgage was executed by such firm in pursuance of a conspiracy between the firm and the mortgage creditors, who had knowledge of the fraudulent acts of the firm, and knew that the mortgage was given with intent to hinder, delay and defraud their general creditors; that the mortgage was neither given nor accepted in good faith for the purpose of securing a *bona fide* indebtedness; but that the indebtedness was in part, if not wholly, false, fictitious and trumped up to suit the occasion, and that the real intent of Wolfe & Son in executing the mortgage was to place their property beyond the reach of their creditors.

The case was tried before a jury, and resulted in a verdict and judgment for the defendant, which was affirmed by the

Supreme Court of the Territory (*Browning* v. *De Ford*, 8 Oklahoma, 239); whereupon plaintiffs brought the case to this court both by writ of error and appeal. Another suit in attachment brought by E. S. Jaffray & Co. against Wolfe & Son, in which the mortgage was set up as a defence and the facts were the same, also resulted in a judgment that the mortgage was fraudulent. *Jaffray* v. *Wolfe*, 4 Oklahoma, 303.

Mr. John W. Shartel for plaintiffs in error and appellants.

Mr. Arthur A. Birney for defendant in error and appellee.

Mr. Justice Brown, after making the above statement, delivered the opinion of the court.

This was a contest between mortgage creditors suing as plaintiffs and attaching creditors representing the defendant sheriff.

The facts are that on December 15, 1890, the firm of W. F. Wolfe & Son, retail merchants, and conducting a store at Oklahoma City, executed a joint chattel mortgage to one Vance and several other creditors for whom he acted, and by whom he was authorized to take any security he could get, of their stock of goods at Oklahoma City, and another stock at the city of Guthrie, not involved in this case. The mortgagees immediately took possession of the mortgaged property by one Harvey, their agent, and a brother-in-law of Vance, who proceeded to take an inventory. Shortly after the execution of the mortgage, a number of other creditors brought suits in attachment against Wolfe & Son, and through the defendant De Ford, sheriff of Oklahoma County, levied upon the goods, and dispossessed the mortgagees, who brought suits for the conversion of the property. These suits were subsequently consolidated into two cases, in one of which all the mortgage creditors appear as plaintiffs, and the sheriff of Oklahoma County as defendant. The defence was that the goods were fraudulently obtained of the attaching creditors by false representations made by W. F. Wolfe & Son as to their assets, and that

Vance, one of the mortgage creditors, acting for himself and as agent and attorney for the others, not only had full knowledge that such goods were wrongfully and fraudulently obtained, but actively participated in obtaining the same, and that he had full knowledge that the mortgage was executed by Wolfe & Son for the purpose of hindering, delaying and defrauding their creditors, and actively participated in such fraudulent device. In other words, in brief, that the goods were purchased in the pursuance of a conspiracy that when a large stock had been obtained by Wolfe & Son by means of fraudulent statements as to their assets, certain deeds of their real estate which had been previously made, but which had remained unrecorded, should be placed of record, and the goods and merchandise obtained upon such fraudulent statements should be mortgaged to the plaintiffs in satisfaction of their claims.

In this connection the court charged the jury that, "in order to invalidate the chattel mortgage, it is not enough for the defendant to show simply that the firm of W. F. Wolfe & Son fraudulently purchased goods of the attaching creditors, but it must also appear from the evidence that the plaintiffs in this case were parties to such fraud; that they were either active participants in such fraud, or that they aided or abetted in such fraud, or that such plaintiffs at the time they took such mortgage actually knew that Wolfe & Son had fraudulently incurred a liability and debt for the goods or a portion thereof described in the chattel mortgage."

Though there are many assignments of error, there are really but two which require our consideration: First, that there was no evidence of knowledge on the part of Vance, who acted for the mortgage creditors, of the fraudulent character of the purchases made by Wolfe & Son of the attaching creditors; second, that the court erred in holding the mortgagees liable simply upon proof that the mortgage was taken with knowledge of such fraudulent representations.

1. To make out their case the attaching creditors were bound to show, first, that the goods were fraudulently purchased, and, second, that the mortgagees, or Vance, their agent, was a party to or cognizant of such frauds. There was ample evidence that

the goods were fraudulently purchased. The firm of W. F. Wolfe & Son was composed of William F. Wolfe, the father, and Louis H. Wolfe, the son. On January 5, 1887, Louis H. Wolfe deeded to his wife Winifred, in consideration of love and affection, a certain lot of land, No. 15, in Topeka, Kansas, by deed, which was not recorded until December 17, 1890. On July 26, 1890, William F. Wolfe and his wife Georgia H. deeded to Laura V. Vance, their daughter, and the wife of A. H. Vance, another lot in the city of Topeka, No. 20, in consideration of the sum of $6500, and subject to a mortgage of $4000. This deed was also filed for record December 17, 1890. On September 8, Georgia H. Wolfe, wife of William F. Wolfe, made application to the townsite trustees of Oklahoma City for a deed to four lots of land in that city, being the site of their business house, stating that she had purchased the same on May 17, 1890, of Louis H. Wolfe, her son, and William F. Wolfe, her husband, who had given her a quitclaim deed to the same. This deed was also recorded the same day (December 17). Notwithstanding these deeds, the Wolfes, in their statement of assets furnished the attaching creditors, included all this real estate, putting an estimate of $20,000 upon that in Topeka and $12,000 upon that in Oklahoma. This amount added to the value of the Oklahoma store stock $17,000 and the Guthrie store stock $35,000, made their total assets $84,000, less $27,000 liabilities, net assets $57,000. Sundry letters were produced from the firm, written during the summer and fall of 1890 to several of the attaching creditors, in which this real estate was included as a part of their assets, notwithstanding that most of it had already been conveyed to different members of their families. These facts, which were not denied, and which were scarcely susceptible of denial, were fully established, and were clearly sufficient to lay before the jury as to the fraudulent character of the purchases of the attaching creditors.

The facts that Vance was a lawyer of long standing and considerable practice, and, as already stated, was the son-in-law of William F. Wolfe; that one of the deeds was to his wife, and was withheld from record for several months, and until a day or two after the chattel mortgage was made; that he could

scarcely have failed to know that other deeds had been made to the wives of William F. and Louis H. Wolfe, which were also withheld from record; that these men were merchants who were constantly buying and replenishing their stock and stood in need of credit; and that he was himself one of the creditors secured by the mortgage—for a debt, too, which had been already partially paid—were, we think, sufficient evidence to open to the jury the question of his connection with the scheme of Wolfe & Son to execute this mortgage for the purpose of defrauding their unsecured creditors. The very fact that one of these deeds was withheld from record for three years and a half, another for eight months and another for about six months was, unexplained, sufficient to indicate that they were withheld for no good purpose. While evidence was lacking of a direct participation by Vance in these plans to defraud the creditors of Wolfe & Son, his intimate connection with the family and the fact that the mortgage was given, partially at least, to secure him for his liability as surety for the firm, was not too remote to justify the court in laying the whole matter of his connection with the fraudulent scheme before the jury, and as he was acting as agent and attorney for the other secured creditors, they were equally chargeable with himself.

2. Upon the second point, the jury were instructed in substance that to defeat the mortgage it was necessary for the attaching creditors to show that Wolfe & Son were guilty of fraud in contracting the debts, to satisfy which the writs of attachment were levied; and also to show that the mortgagees were parties to such fraud; or that at the time they took the mortgage they knew that Wolfe & Son had fraudulently incurred a liability for the goods described in the mortgage. The objection of the plaintiffs to this instruction is stated in their fourth assignment of error, that the court "erred in holding as a principle of law that where goods have been fraudulently obtained by means of false representations as to the financial standing of a debtor, and where such creditors elect to sue for the purchase price of such goods, and proceed by the attachment of the property claimed to belong to the debtor, that a party previously taking a mortgage on such goods to secure an

antecedent debt, with knowledge of such false representations, must surrender such property to such attachment creditors."

The theory of the plaintiff is that the attaching creditors had an election of remedies — either to rescind the sale and replevy the goods, in which case it would have been sufficient as against the mortgagees to prove that they took the mortgage with the knowledge that the goods had been fraudulently purchased, and that the mortgagors had no title to them; or to sue for the purchase money and thereby affirm the sale, and to attach the goods as the property of the mortgagors, in which case the mortgagees would stand only as preferred creditors, and their mortgage would be valid, notwithstanding their knowledge that the goods had been fraudulently purchased.

It is entirely true that, upon being satisfied that the goods had been purchased upon fraudulent representations, the attaching creditors had an election of remedies. They might rescind the sale and replevy the goods, or they might affirm the sale, sue for the purchase price, and attach the goods upon the ground that they had been fraudulently purchased. Had it not been for the mortgage, it would only have been necessary for the attaching creditors to show that the debts were fraudulently contracted, to sustain their attachment; but in order to attack the mortgage, and to show that they had a title superior to that of the mortgage creditors, it was necessary to go further, and prove that the mortgage was fraudulent. This might be done by evidence that the mortgage was taken in pursuance of a scheme to defraud the general creditors, or that the mortgagees took their security with the knowledge that it covered goods which had been purchased upon fraudulent representations, and that the purchases were made under such circumstances as would entitle the vendors to rescind the sale and reclaim the goods. They chose, it is true, to treat the sale as valid, sue for the purchase price, and thereby affirm the title of the vendees, but they did not thereby affirm the mortgage. Their approbation went no farther than the sale from themselves to Wolfe & Son. Their reprobation went to the mortgage, and to that alone. There was, indeed, an election of remedies, and having made an election the attaching creditors

were bound thereby. But such election went no farther than to affirm the sale, under which they were at liberty to attach the goods as still belonging to the vendees. They were bound no farther by the fraudulent mortgage of such goods than they would have been by the fraudulent assignment of them, and no class of cases is more common than that of attachments sued out for goods which are claimed to have been fraudulently assigned.

The instruction complained of is fully supported by the recent case in the Supreme Court of Kansas of *Wafer* v. *Harvey County Bank*, 46 Kansas, 597, which holds directly that an antecedent creditor, who knows that his debtor procured goods and merchandise by fraudulent means, cannot by a chattel mortgage secure a lien upon such fraudulently procured goods, adverse to the innocent vendors of such goods. This was also an action by a chattel mortgagee against the sheriff who had seized under attachments a stock of goods belonging to the attachment debtor. The distinction relied upon by the plaintiffs in this case was noticed in that, the court remarking that these goods having been obtained from the attaching creditors by fraudulent means, the debtor acquired no title to them, and the attaching creditors would be justified in retaking the goods, or they could waive the tort and bring an action for their value, in which case knowledge of the plaintiffs that the goods had been fraudulently obtained, did not put them in a position of *bona fide* purchasers or enable them to set up the mortgage against attaching creditors.

In the cases relied upon by the plaintiff, but one (*Stokes* v. *Burns*, 132 Mo. 214) is in point. In that case it was held that where defendants procured goods by fraud, and transferred the same in trust for a bank, to secure a *bona fide* indebtedness, the mere knowledge of the bank that the goods were so procured, and that the defendants intended to defraud their other creditors, is not sufficient to avoid the trust deed at the suit of a creditor, who did not seek to disaffirm the sale of property by him to defendants. The suit was by attachment for the recovery of an amount for flour sold by plaintiff to the defendants, under which the sheriff seized certain property. The grantee

under the deed of trust filed an interplea, claiming the property so seized under his deed. The court held that the plaintiff, by suing upon his account, waived the fraud in the sale, and treated it thereby as the property of the defendants, with the same power of disposition in the defendants over it as of any other property owned by them. It was said: "If the debts secured by the deed of trust were honest debts, and the property conveyed was not excessive, and no collusive agreement shown between the defendants and the bank and Ayr Lawn Company or the trustee in the deed of trust for the use of the defendants, the deed of trust must be maintained, and there was nothing to submit to the jury. No proof was offered or claim made at the trial that any part of the property conveyed by the deed of trust was, by agreement between defendants and the beneficiaries, to be held for the use of defendants. Then proof of fraud on the part of defendants in procuring the property would have no tendency to prove such a result. If the debt secured was honest, the dishonest methods of defendants in gathering to themselves the property, and the knowledge of that fact by the beneficiaries, together with a knowledge of defendant's intention to defraud their other creditors in making the deed, all would not invalidate the deed or make availing to plaintiff the property thus conveyed in this character of suit." It was admitted in the case that the plaintiff had an election of remedies, but it was said that "the action of the plaintiff in that case was based upon a contract of sale, and was a confirmation of it and a waiver of all fraud involved in it, so far as the rights of the interpleader are concerned in the contest for the property. The sole inquiry, then, was as to the alleged fraudulent disposition of the property by the deed of trust to the interpleader, with the burden of its establishment upon the plaintiff."

We are unable to accept this view of the law. We think it makes no difference as to the rights of the mortgagee whether the action be in replevin or assumpsit. In either case the mortgagee can hold them if he be a *bona fide* purchaser, without notice, but not otherwise. If the attaching creditors rescind the sale and sue in replevin, the mortgagees, having knowledge of

the fraudulent purchase, are in the position of taking a mortgage upon property to which they knew the mortgagor had no title. If, upon the other hand, the creditors proceed by attachment, the mortgagees, knowing that the goods were fraudulently purchased, stand in the position of taking advantage themselves of the debtor's fraud and obtaining a preference to which they are not justly entitled. If, as the evidence had some tendency to show, they actively participated in the fraud, their position is even worse.

It is consonant neither with good morals nor sound sense to hold that one may take a mortgage upon the property of another, which he knows to have been fraudulently acquired, and to which the purchaser has no valid title, whether the vendor elect to pursue the purchaser by a retaking of the property, or by an action for the price and an attachment of the property to secure the debt. Whichever remedy be pursued, the fact remains that, at the time the mortgage was taken, the mortgagor had a voidable title to the property mortgaged; and while an election to sue in assumpsit recognizes this title as between him and the vendor, such recognition does not redound to the validity of the mortgage, which must be judged of by the circumstances under which it was taken. In other words, the suit in assumpsit affirms the title of the vendee but not the title of his mortgagee.

It is at least open to doubt whether, if the mortgagees had disposed of these goods, an action might not have lain against them for their value, upon the same principle that supports an action, where the seller is induced by fraudulent representations to sell goods to an insolvent third person, from whom the misrepresenting third person afterwards obtains them. An action lies on the assumption either of a fraudulent conspiracy rendering such participant liable, or upon the ground that the nominal purchaser was only a secret agent for the misrepresenting party, who finally bought the goods. *Biddle* v. *Levy*, 1 Stark. 20; *Hill* v. *Perrott*, 3 Taunt. 274; *Phelan* v. *Crosby*, 2 Gill. 462; *State* v. *Schulein*, 45 Missouri, 521; 2 Schouler's Pers. Prop. sec. 612; Benj. on Sales, 4th ed. sec. 445.

The other cases cited by the plaintiffs are not in point. In

O'Donald v. *Constant*, 82 Indiana, 212, the evidence showed that the debtor who purchased the goods fraudulently turned them over to certain preferred creditors who had no knowledge of the fraudulent purchases. The case of *Bach* v. *Tuch*, 126 N. Y. 53, merely holds that a suit for the price brought with knowledge of the fraud was a ratification of the sale, and estopped the vendor from rescinding it and suing in replevin. The cases of the *First National Bank* v. *McKinney*, 47 Nebraska, 149, and *Thomason* v. *Lewis*, 103 Alabama, 426, are to the same effect.

Upon the whole, we see no error in the judgment of the Supreme Court, and it is therefore

Affirmed.